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No. 85-1924

In the Supreme Court of the United States

OCTOBER TERM, 1986

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 340, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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Petition for Writ of Certiorari filed May 22, 1986
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III

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

IN THE MATTER OF:
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LOCAL 340 BOARD CASE NOS. 20-CB-5717,
20-CB-5825, 20-CB-5781

Date	Documents
11.22.82	Charge, 20-CB-5717
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09.27.83	Administrative Law Judge's Decision
11.07.83	Respondent's Exceptions
08.14.84	Decision and Order
11.08.84	Application for Enforcement
01.22.86	Decision of the Court of Appeals
01.22.86	Judgment of the Court of Appeals
04.16.86	Board's motion for extension of time to file petition for writ of certiorari granted
05.22.86	Petition for writ of certiorari filed
10.06.86	Petition for writ of certiorari granted

BEFORE THE
NATIONAL LABOR RELATIONS BOARD,
TWENTIETH REGION

Case Nos. 20-CB-5717, 20-CB-5781, 20-CB-5825

IN THE MATTER OF:
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCAL 340, RESPONDENT,

AND

HAROLD E. NUTTER, INC., CHARGING PARTY,

AND

ROYAL ELECTRIC COMPANY, CHARGING PARTY.

Room W-2142
Federal Building
2800 Cottage Way
Sacramento, California

Thursday, July 28, 1983

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

BEFORE: HON. JAY R. POLLACK
Administrative Law Judge

APPEARANCES:

On behalf of the General Counsel, National Labor Relations Board:

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[11] * * *

MS. WATSON: It was also moved that judicial notice be taken of the Decision of Administrative Law Judge Jay R. Pollack in JD-SF-5583, International Brotherhood of Electrical Workers, Local Union 340 and Hulse Electric, M & M Electric, Clint McCubbin, Rex Moore, Amos J. Walker, Inc., and Peters Electric—the Decision is dated March 28, 1983—and the facts as found therein.

MS. SURE: That is opposed by the Respondents here. For purposes of expediting the proceedings we will stipulate to one section of the Decision, referred to as "Background", if that will be of any assistance in expediting this proceeding.

We would oppose based on relevance taking judicial notice of an entire Decision, which deals with other facts in that we would have no opportunity to object to some of those facts as being relevant to the instant case. But, if [12] you turn to page four, "Background", we could stipulate to—under Section A—

JUDGE POLLACK: So, that's Section A, "Background", which—

MS. SURE: Up until the last two paragraphs of Section A. So, Section A on page four and the first two sections of

Section A on page five. But that would be all that we would be willing to have included in this record as background.

JUDGE POLLACK: Well, you know, obviously I can take judicial notice of the Decision, but I would like to know for what purposes you want me to take notice so that the Respondent has an opportunity to defend.

MS. WATSON: Obviously, I would like you take notice of the facts, of course, in the "Background" section so that we do not have to litigate these facts again since we've already litigated the background before.

JUDGE POLLACK: But, hasn't Ms. Sure taken care of that by her willingness to stipulate to those facts?

(Pause.)

MS. WATSON: I would also like to have judicial notice taken of the facts in Section J on page 24, the bargaining relationship; and in Section K the conclusions regarding Section 8(b)(1)(b) violations. By Section K I'm not asking for the legal conclusions and the legal analysis [13] therein, but merely the facts that are set forth in that section as they don't seem to be set forth otherwise in the Decision, in the background section or anywhere else.

(Pause.)

MS. SURE: Do you want our position, Judge?

JUDGE POLLACK: Yes.

MS. SURE: With respect to the sections under J and K, again, these are all conclusions drawn from facts which the Judge found relevant apparently to the case under Hulse in the consolidated cases then. They deal directly with those employers, directly with facts which entered into with respect to those employers, none of which would be relevant to the instant employers.

And, the only areas arguably relevant would be the mere background facts that we entered into, which are again

just reargued here on page 24. And I say argued again because they are argued in the light most favorable to the Decision written by the Judge in this case.

They are not set forth in an objective statement of facts as the background was. And any fact—again, as I have relayed both to the Counsel for the General Counsel and Counsel for the Charging Parties—if we shown at any point testimony or some document which either believes is relevant to the instant case then we can be given the opportunity to argue relevancy here or stip it in as an [14] undisputed fact.

But, that's not the case here. I don't have the facts, these are the conclusions drawn from them.

MS. WATSON: I would note that the facts were fully set forth and litigated with a full opportunity for Respondent to dispute those facts—

MS. SURE: Then we will dispute them again here.

MS. WATSON: —as evidence in the earlier trail.

JUDGE POLLACK: Well, isn't that the particular problem? You know, to start off with the facts really dealing with other employers. And you want to use some of the facts that pertain to other employers to argue in this case and the Union's position would be that I can't draw any inferences from incidents involving the Local Union and other employers.

MS. SURE: For instance, if Counsel for the General Counsel offers a stipulation that no Representation Petition was filed on either Royal or Nutter I can stipulate to that as an undisputed fact. For instance, if we can identify what exactly is wanted or desired in this case with respect to the 17 Petitions I can enter into a stipulation that would make it clearer.

JUDGE POLLACK: I take it there is no issue as to when the disclaimer was filed and the contents of the disclaimer is set forth in the Decision?

[15] MS. SURE: No.

JUDGE POLLACK: I take it the conversations dealing with Rex Moore you feel are irrelevant to this case and the conversations dealing with persons employed by McCubbin, M.S. Walker, etcetera?

MS. SURE: Precisely.

And, I would raise all of this in objections again. But, in a sense of just wholesale bringing-in a record from another case, especially a record in its conclusary findings here—you know, based on the facts as were found by the Judge at that point—would not be giving us the opportunity to argue on the exact facts.

JUDGE POLLACK: Well, but generally when you're talking about judicial notice of a Decision with facts in them if the party had a chance to litigate it in the first instance—which you did, you have the initial record before you in the Hulse case and were a party in that case—what would be the impediment to taking judicial notice?

MS. SURE: Because there might be different relevancy objections in this case.

JUDGE POLLACK: Okay.

MS. WATSON: I think it should be noted that it is our position that all of these cases arise out of the same dispute and are related. And this is why we had asked for them to be consolidated and this is why we believe that there [16] is possible relevance for some of the facts as brought out in the earlier trial as to other employers.

JUDGE POLLACK: Well, as pointed out, I'll take judicial notice of the Decision and particularly those matters in "Background" because they don't seem to be at issue.

But, it seems to me that if you want to go beyond that, in order to be fair to the Respondent I will have to require you to be more specific so they know exactly what it is that you're relying on in the other record so they are given full opportunity to defend it, explain it, etcetera.

MS. SURE: That would be our position, without meaning at all to be dragging this thing out unduly. If we can be shown exactly what facts it is that—

JUDGE POLLACK: Trying to balance both interests here, I think that's the best way to do it. I'll require the General Counsel to be more specific about what facts she wants me to take judicial notice of so that you will have your chance to defend or explain.

MS. WATSON: Other than in the Background Section A, correct?

JUDGE POLLACK: Well, there doesn't seem to be any dispute regarding those facts, which include the disclaimer and—but if you want to rely on conversations or communications [17] between the Union and employers other than Nutter and Royal, or anything along those lines, I think you have to be more specific so that Respondent can defend that in this case if it so chooses.

MS. SURE: With respect to the background we can further—since the background here was, again, designed to speak to the employers in the instant case, I can offer the stipulation that the 17 Representation Petitions would not include Royal Electric or Nutter Electric.

MS. WATSON: I will stipulate to that.

MR. NOVOTNY: So stipulated.

JUDGE POLLACK: Fine.

* * *

[19] ALBERT L. SCHOUX, JR.

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Give us your name and address for the record and spell your last name, please?

THE WITNESS: My name is Albert L. Schoux, Jr. and it's spelled S-C-H-O-U-X. And I reside at 16247 Jerico Road, Grass Valley.

DIRECT EXAMINATION

BY MS. WATSON:

Q Mr. Schoux, who are employed by?

A Royal Electric.

Q How long have you been with Royal Electric?

A Off and on for two years.

Q How long have you been employed with Royal recently?

A Through the Aerojet job, a year.

Q When you were first hired by Royal Electric what was the position that you were hired for?

A Superintendent.

* * *

[20] Q You have worked this last time for Royal for approximately the last year, is that correct?

A Yes, off and on.

Q And, you were hired as?

A Superintendent.

Q When you were hired by Royal the last time were you told what your job duties and your job authority would be?

A Yes, I was.

Q Who told you this?

A Frank and Leo Velluntini.

Q Who are Frank and Leo Velluntini?

A The owners of Royal Electric.

Q And, what did they tell you about your job duties and authority?

A They asked me if I would oversee their jobs as far as material handling, hiring, material ordering, general running on the jobs.

Q Were you hired at that time for a specific job?

[21] A Yes, at that time it was Aerojet.

Q And, when did you first start on the Aerojet project?

A It was roughly about November of 82.

Q Prior to the Aerojet project you have worked for Royal before, is that correct?

A Yes.

Q In what capacity had you worked for them before?

A Superintendent also

Q What jobs did you work on prior to that?

A It was the County Jail Annex at 7th and I.

Q When was the County Jail job?

A That was approximately between—let's see, September through December of 81.

Q Were your job duties or your authority any different on the County Jail job than they were later on in the Aerojet job?

A No.

Q How many employees did you have under your supervision at the County Jail?

A Six.

Q Would you describe for us what kind of project the Aerojet job was?

A Well, basically it was three contracts. When I started out there we had a small vacuum pump project going for McBride. And during the process of that job we picked up [22] a substation for Building 2009 and then right after that we received a contract for the relighting for Building 2009.

Q Were these three contracts ongoing at the same time?

A Yes, they were.

Q And, who was in charge of the three contracts?

A I was.

Q Had any of them started by the time you were hired for the Aerojet job?

A No.

Q So when you first started on the Aerojet job what was the first thing that you did as far as getting the job going?

A Usually we will proceed to the job site and inspect the facilities and double-check to make sure everything is disconnected so that no personal injury could evolve.

Q Did you—was there a general contractor on that job?

A Yes, there was. One particular job, we were general on the other two.

Q Who was general on the third one?

A We were, the large one.

Q One of the jobs—

A The second and third both, we were general.

Q On the first one there was a different general contractor?

A Yes, we were for a mechanical contract for McBride.

[23] Q Did you consult with McBride before you started work on the Aerojet job?

A Yes, on those jobs you have to work through the general contractor.

Q Did you have any Foreman under you at the Aerojet project?

A No.

Q Now, when you were given the Aerojet project by Leo or Frank Velluntini what did they tell you to do about this job?

A They told me I had complete coordination with them through the shop and that I was completely in charge of all the hiring, firing and the necessary paperwork as far as laying the job out.

Q Did they give you the plans and the specifications?

A Yes, they did.

Q How were employees hired for the Aerojet job?

A Through the referral hall.

Q Did you interview any employees?

A Usually I interviewed them first thing they were at the job.

Q Had they been interviewed before that, do you know?

A Usually through the shop.

Q Did you go through any resumes of employees that were to be sent to the job?

[24] A No, most of them come out of the hiring hall.

Q What did you do when a new employee came out to the job site?

A Usually I had a discussion with them as far as his capabilities and the type of work he had done prior.

Q When the Aerojet job first began what was your responsibility as far as materials and supplies and equipment?

A It was primarily just coordinating the labor and material between Royal Electric and Aerojet.

Q Who ordered the material for the job?

A Primarily most of the material was supplied by Aerojet. We did have a small amount of material. But any material that is requested on the job I do.

Q How would you go about requesting some material that you needed?

A I would call the office and talk to the Material Expediter.

Q Did you have to clear your orders through Leo or Frank?

A No.

Q Did you ever have to order any large amounts of equipment for that job after the job was started?

A Not usually. The bulk of the material is usually ordered upon receiving a contract.

Q Did you lease or rent any equipment while you were on [25] the Aerojet job?

A Yes.

I leased high-lift equipment from Sierra Crane.

Q And, how did you go about doing that?

A Well, my first day on the job I noticed that he had quite a bit of equipment, he had a total of six pieces. And I approached him and asked him if he would be interested in subleasing some of the equipment back to us. And he said, yes, he would be interested.

So I called Frank Velluntini and suggested that he notify Sierra Crane and make arrangements with them.

Q Did Frank dispute the need for such equipment?

A No.

Q Did you have to order any tools on this Aerojet job?

A Small electrical tools are usually supplied by the shops.

Q And, how did you order them if you needed them?

A Through the Purchases Agent, Material Handler.

Q Did you have to order any tools through Aerojet?

A No, they didn't supply any tools at all.

Q When you ordered tools through the Material Expediter—is that what you said?

A Yes.

Q Did you have to clear your orders through Frank or Leo?

[26] A No.

Q What about fixtures and conduit and wire, who did you order those from?

A Primarily that was all furnished by Aerojet.

Q Who determined how much was to be ordered and when it was needed?

A I did.

Q And, did you check with the office before you ordered these things from Aerojet?

A No.

Q Now, when you were on the Aerojet job what were your daily duties?

A Usually mostly layout and order the material and schedule the men as far as their duties.

Q Would you describe for us exactly what you mean by laying out the work?

A Well, what I usually try to do, you know, in a twenty-four period is to coordinate myself with the plans and specs and arrangement of the job so I could put the proper men in the proper places to be productive.

Q Did you actually physically layout any work that was done on that job?

A No.

Q Who did that?

A Nobody. I just—usually what I do is I draw them [27] a sketch or something like that of what I want done if it goes into any detail at all.

Q And you give it to an employee, a Journeyman?

A Yes.

Q Did you confer with the—did Aerojet have an Engineer on the site?

A Yes, they had an on-site Coordinator to inspect it.

Q And, did you confer with him?

A Yes, quite often.

Q How often would you say that you conferred with him?

A On a weekly basis probably six to eight hours.

Q Do you know if he conferred with anyone else in Royal Electric about problems on the job?

A No.

Q While you were on the Aerojet job did you make any changes to the plans as you already had them?

A Yes.

Q And, what kind of changes did you make?

A Well, originally it was a tight-scheduled job and we moved 1500 existing fixtures and put up 700 new ones. And, due to the process of removing, the way manually we would have to do it and the limited amount of time, I had

to cut the channel. Therefore I suggested that we weld the channel back in eight foot lengths and prewire it and put it back up, which speeded the job up considerably.

[28] Q Was this procedure called for in the plans?

A No.

Q Before you did this procedure did you get permission from Frank or Leo to make this change?

A No, I didn't.

Q Did you consult with the Aerojet Engineer about it?

A Yes.

Q Did he okay the change?

A Yes, he did.

Q While you were on the Aerojet job did Royal have any subcontractors on the job?

A Yes, we did.

Q And, who was this?

A B & A.

Q And, what were your responsibilities as far as B & A?

A Just to coordinate my work with them as far as pulling the high voltage cable and the make-up in the transformer pads.

Q How did you have to arrange your work to take into account B & A's work?

A The problem was that we had to have a shutdown on the high voltage cable. So what we had to do was coordinate the productivity on the job to match the scheduled shutdown the second week of December. They scheduled a major shutdown at Aerojet. So, I had to coordinate all of my work around [29] that particular time so the cable would be there and they would be on the job in that week to do that amount of work needed.

Q Did you have to clear this arrangement with Frank or Leo?

A No, they were aware of it.

Q While you were on the Aerojet job who had responsibility for any safety problems or safety complaints?

A I did.

Q Did you have any of these kinds of problems on that job?

A Petty. The biggest one was getting the guys to keep their hardhats on.

Q Who was responsible for telling them to keep their hardhats on?

A I am.

Q And—

A I'm also liable.

Q Did you ever have anyone who made any kind of safety complaint to you?

A None.

Q Did you have anyone who ever complained that he didn't want to work up high or something like that?

A Yes, I had one individual who said he was scared of heights. So I took him off the main lift and put him on the [30] ground.

Q Did you have to clear that with anyone?

A No.

Q While you were on the Aerojet job did you keep a job journal?

A Yes, I did.

Q How often did you keep this journal?

A Daily.

Q And, what went into it?

A Primarily man hours and any visitors or any conversations with the inspectors, material ordered.

Q Did you do any other paperwork?

A Safety meeting once a week.

Q What about change orders?

A On that job it was pretty much cut and dry.

A Why was that?

A Well, it went in a pretty well inspected plan.

Q Who handled the timesheets and the payroll reports for employees on that job?

A I did. On a weekly basis.

Q Were you the one who logged their hours?

A Yes.

Q Did Aerojet have an on-site inspector?

A Yes.

Q And, did he ever order any changes made to your order [31] after he had inspected it?

A Just a few time he requested that we—we were in the process of removing fixtures and he requested that we put some additional fixtures up temporarily.

Q What did you do about that?

A Accomodated him.

Q Did you check with the office before you did it?

A No, I didn't.

Q How much of your time in an average week out at the Aeroject job would you estimate that you spent dealing with the plans and specifications?

A Probably ninety-five percent of it.

Q Where was this work done with the plans and specifications?

A At Building 2009.

Q Did you have an office in there or a desk or trailer or anything?

A I had a small desk inside the trailer.

Q And, where were the men working in relation to where you would work with the plans?

A All over. The building covered seven and a half acres, so they were widely spread.

Q Now, you said you had three contracts out at Aeroject for which you were responsible?

A Yes.

[32] Q What was the range of employees, the number of employees you had on each project?

A Basically I didn't have any particular number on one project. I had to shift them around from job to job depending on the schedule. It would range anywhere from three to ten.

Q So, you had at various times as many as ten people working on the three projects combined?

A Right.

Q When you switched people around from one job to another did you have to clear this with anyone?

A No, I didn't.

Q How did you decide whether to switch them from one place to another?

A Experience.

Q The employee's experience?

A No, mine.

Q Did you also take into consideration the employee's experience and job skills?

A Always.

Q If you needed extra employees on the job what did you do?

A Usually notified the office.

Q And, what would they do?

A Usually call the referral hall. Or I could call directly myself, either way.

[33] Q Directly to the referral hall?

A Yes.

Q Did you do that at all on the Aerojet job?

A I can't recall right off.

Q When you called the office and asked for employees did you ever ask for anyone by name?

A Yes, some of the local guys that I'm, you know, familiar with.

Q Were you ever refused anyone that you asked for by name?

A No.

Q Did Frank or Leo ever dispute your judgment as to who you asked for?

A There was one particular case, Bruce, which he has a bad leg and they thought it might be rather hard for him to get up and down the high lift equipment. And I just explained to them that there would be no difficulty because once he got on it he would be there to stay.

Q And then was he dispatched to your job?

A Yes, he was.

Q If you had too many employees on the job what did you do in that situation?

A Usually I would call the office to see if they had work other places.

Q And, if they didn't have any work for these employees [34] what would you do?

A I would either send them home or lay them off.

Q Who decided the number of employees that were needed to do the job at any given time?

A I did.

Q Did Frank or Leo ever question you as to the numbers?

A Never.

Q And, if you had to lay someone off how did you do that?

A I would just call the office and talk to the secretary and give her the amount of time and have her write a check and deliver it, or I would go and pick it up.

Q If there were any personal problems on the job who took care of those?

A I did.

Q Did you ever have any problems with employees drinking on the job?

A Yes, I had one individual.

Q And, what did you do about that?

A I just got him aside and I told him that either he was going to stop the drinking or he was going to be terminated.

Q And, what happened?

A He agreed that he would not drink prior to the job.

Q Did the problem straigten itself out?

[35] A Yes, it diid. He was with me right to the end.

Q Did you check with Frank or Leo before you warned him about the problem?

A No.

Q Have you ever had any problems with employees being late?

A Yes.

Q And, what did you do about that?

A Docked them.

Q How did you go about doing that?

A It was usually ten or fifteen minutes late and I would just keep track of the amount of time he was late and I would deduct it from his pay.

Q Did you get any permission to do that before you did it?

A No.

Q Did you give him any warnings about being late?

A Yes, I did.

Q And, what happened?

A He ignored them.

Q Was this person finally laid off?

A No, he's still with the firm.

(Pause.)

Q Now, when you had the three projects going out at Aerojet I believe you've already said you switched employees [36] around from one project to another. Did you have to clear this with anyone?

A No.

Q What were the reasons for switching them?

A Well, usually because when you've got three jobs going at the same time your material flow changes on a day to day basis and the demands of the job. So, I would

have to pull part of the crew off of the lighting to set a piece of switch gear or pull some cable or—you know, whenever that particular material arrived on the job site.

Q Have you ever fired anyone?

A No, we usually just lay them off.

Q What do you mean exactly by laying them off.

A Just terminate them, just tell them that we're out of work.

Q Have you ever sent anyone back to the office or called the office and said, "I dont want them on my job anymore"?

A No.

Q Would you have the authority to do that?

A Yes, I would.

Q Did you authorize any overtime for the Aeroject job?

A Not to my recollection, no.

Q Have you authorized overtime on other jobs?

A None.

* * *

[37] Q Do you have the authority to authorize overtime?

A Yes, I do.

Q And, do you have the authority to decide on the job [38] who would be the employees who work the overtime?

A Yes, I do.

Q Do you have the authority to decide when the overtime would be worked?

A Yes, I do.

Q Now, on the job do you inspect the work which has been done by the employees?

A Upon completion.

Q And, how do you go about doing this?

A Usually I would have to go in and open up the necessary panels and fixtures and equipment to make sure it's connected properly.

Q How much of your time would you say—on the Aerojet job, for instance—that you spent doing that?

A On a weekly basis probably four hours.

Q Have you ever recommended that anyone be promoted of given a raise?

A Yes.

Q And, do you recall who that was?

A Yes. Jack McAtee, who is still presently with us. Now he's running his own job.

Q And, what did you recommend him for?

A Foreman's position.

Q Have you ever recommended that anyone be promoted from say, Class III to Class II?

[39] A Yes. There was one individual, Stan Hyden.

Q And, who did you make the recommendation to?

A To both Frank and Leo.

Q And, was he promoted?

A Yes, he was.

Q And, Mr. McAtee that you were just referring to, he was promoted to Foreman, is that correct?

A Yes, he was.

Q Did you make that recommendation also to Frank and Leo?

A Yes.

Q Have you ever granted anyone any time off for personal reasons such as illness?

A Yes.

There was an instance at Aerojet where McAtee had to have a knee operation. And he asked me if it would be possible to take four days off and I said, yes, that there was no problem, that I could work somebody in around him.

Q And, how did you get someone else to replace him for those days?

A Usually just call the shop to see if there was anybody available to fill in for that amount of time.

Q Did you clear it with Frank or Leo before you told him he could have the four days off?

A No.

[40] (Pause.)

Q Now, since the—when was the Aerojet job over.

A Let's see, it would be about February 20, 1983, somewhere in there.

Q And, have you worked for Royal since that time?

A Yes, I have.

Q Are you currently working for Royal?

A Off and on.

Q What have been the jobs that you have done for Royal since the Aerojet job?

MS. SURE: Objection; irrelevant.

The fine occured to my knowledge in December of 1982. I don't see any need to get anything—

JUDGE POLLACK: I thought it was January of 1983.

MS. SURE: I think the actual charge—

MS. WATSON: The citation was in December of 82, I believe, and the fine was in January of 83.

JUDGE POLLACK: Oh, okay. I'm sorry, you're right. Why then would we be concerned with times after that?

MS. WATSON: Well, just for his continuing supervisory authority.

JUDGE POLLACK: All right, go ahead.

THE WITNESS: Yes, I presently just finished a job out at Data Drive, short term.

[41] BY MS. WATSON:

Q What was your position on that job?

A To layout and coordinate.

Q Have you ever worked for Royal in any other job capacity than what you worked for them as at Aerojet or now?

A No.

Q Have you ever worked at Royal as a Journeyman?

A No.

* * *

[42] Q Do you recall what happened on December the 14th of 1982?

A Yes.

It was approximately about eight-thirty in the morning and I was out inspecting some switch gear on the high voltage transformer pad. And, this gentleman came up and asked me who I was with. And not knowing who he was or anything I said Royal Electric and he turned and walked away.

Q Did you know this person?

A No, I didn't.

Q And, exactly what were you doing at the time?

[43] A I was inspecting the high voltage secondary buss tie-ins to the switch gear.

Q Was this work that was already completed?

A No.

Q You were inspecting work-in-progress?

A Yes.

Q Did this person ask you what you were doing?

A No.

Q Did he ask you—

MS. SURE: Objection.

He stated that the extent of the conversation was, "Who are you working for?", he answered, and the person left.

JUDGE POLLACK: All right, go ahead.

(Pause.)

BY MS. WATSON:

Q Do you have the authority to fire an employee on the job if the need arose?

A Yes, I do.

Q Would you have to clear that decision with anyone in the office?

A No, I would not.

Q What would you do if you had to fire anyone?

A I would just call for his check.

Q When you were out on the Aerojet job who estimated that job?

[44] A I believe Frank did.

Q How often did he visit the job site?

A He was out there twice.

Q When was that?

A First starting-in on the job and at the final inspection.

Q Did anyone else—did Leo ever visit the site?

A Yes, Leo came out one time.

Q Do you know the purpose for his visit?

A He just wanted to see how the job was going together, not being familiar with it.

Q So, neither one of them visited on a regular basis?

A No.

Q When you first began the Aerojet job did you have a job walk?

A Yes.

Q Who was involved in that?

A Myself and Frank.

Q Was anyone from Aerojet involved?

A Yes, the Engineers and also the Coordinator.

Q Was that one of the times that Frank visited the job site?

A Yes.

Q How are you paid, are you paid on an hourly basis?

A Yes, I am.

[45] Q What classification are you?

A I'm not really done by class.

Q Do you know how your pay compares to other employees that you have worked with?

A At the present rate it's fifty percent above Journeyman.

Q So, am I correct in understanding you make fifty percent –

A More than a Journeyman Electrician, right.

Q Do you know if anyone else in Royal makes comparable rate to your's?

A No.

Q Is there anyone else at Royal Electric with a comparable job to your's?

A No.

Q There are other Foremen, is that correct?

A Yes.

Q Are there other permanent Foremen?

A There's no such thing as a permanent Foreman.

Q But, there's no one else whose job duties are comparable to your's?

A No.

MS. WATSON: I have no further questions.

MR. NOVOTNY: May I have just a minute?

JUDGE POLLACK: Okay.

[46] (Pause.)

DIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q Did you meet with any Aerojet representatives on a regular basis?

A Yes.

Q How often?

A Usually once a day with the Coordinator.

Q What did you typically discuss with him?

A Material flow and I wanted their opinion of how the job was going and if they had any grievances as far as safety and production.

Q Did you transfer any employees at the Aerojet job upon their request to different jobs?

A Usually in contact with the office, if they needed a man or two to fill in on another job I would.

Q Did any employee ever come to you on that job and request a different assignment?

A Yes.

Q And, what did you do?

A I just put them, you know, where I basically thought he would handle the job okay.

Q How many times did this happen?

A Just once.

JUDGE POLLACK: That's the person you told us about [47] who didn't want to work up high?

THE WITNESS: No, this was another individual.

BY MR. NOVOTNY:

Q Can you explain that circumstance?

A Well, he was just incapable of doing his job at the time that I requested and he said he didn't know how. And I asked him at that particular time what type of work he had done before. And he told me and then I just relocated him somewhere else, a less difficult job.

Q Did you transfer another employee to his job?

A Yes.

* * *

CROSS EXAMINATION

BY MS. SURE:

Q Mr. Schoux, you've been an IBEW member for approximately twenty-four years?

[48] A Yes.

Q And, when you became an IBEW member you took the oath of the IBEW, did you not?

A Yes, I did.

Q And, at that time you agreed to be bound to the Constitution as the contract between the member and the Union, did you not?

A Yes.

Q Now, at the time you were up in Sacramento were you traveling out of Local 595, was it?

A I beg your pardon?

Q Were you a traveler at the time that you were up in Sacramento from Oakland?

A What particular time are you talking about?

Q December of 1982.

A No.

Q What was your status up there at that time? You were still a 595 member?

A Yes, right—up here?

Q Yes.

A I was Superintendent.

Q Well, no one from 595 dispatched you to Royal, did they?

A No.

Q And, no one from Local 340 dispatched you to Royal?

[49] A No.

Q So, you were up here as an IBEW member and you did not get dispatched from either Local, did you?

A No.

Q You didn't even try to get dispatched, did you?

A Oh, yes, I did.

I was on the books for almost seven months with 340.

Q But, you were not dispatched?

A No, but I was on the books.

Q So, you were aware that you were out there having not been dispatched?

A Yes.

Q And you're aware that that did violate the Constitution?

MR. NOVOTNY: I would object.

I don't see anything in the provisions under which Mr. Schoux was fined that deals with dispatches.

MS. SURE: Mr. Schoux was fined for violating the contract, which includes all sections of the Constitution. He was fined for violating the oath of the Union which includes all sections of the Constitution.

MR. NOVOTNY: Which section of the—

MS. SURE: Article—

JUDGE POLLACK: Please, one at a time.

MS. SURE: Article XII, Sections 3 and 4.

[50] (Pause.)

Oh, I'm sorry. Article XXII, Sections 3 and 4.

JUDGE POLLACK: All right, let's go on.

The objection is overruled.

THE WITNESS: What's the question, again?

BY MS. SURE:

Q You were aware, were you not, that you were out there working for Royal in violation of this contract that you had entered into?

A My understanding that under the supervision I was not in direct violation of the Constitution.

Q You thought that you could just go working anywhere and not get dispatched from a Local?

A True.

Q You didn't show up at the Trial Board, though, to rebut the charges, did you?

A No. I was told not to.

Q You weren't told not to by any Union official of Local 340?

A No.

Q Who told you not to?

A The law firm that's—

Q Of what?

A Thurman? Thierman.

Q Why did he tell you not to show up?

[51] MR. NOVOTNY: Objection.

JUDGE POLLACK: Sustained.

BY MS. SURE:

Q Now, you started working for Royal in mid-November of 1982, correct?

A Approximately, yes.

Q Approximately mid- or late-November?

A Somewhere in that vicinity.

Q You were aware at that time that the IBEW Local 340 had no contract with Royal, weren't you?

A Yes.

Q And, you were aware that no other IBEW Local had a contract with Royal?

A They had no contract at all.

Q Royal had no contract at all?

A No, the IBEW.

Q Did they have any contract with any union to your knowledge?

A Royal?

Q Yes.

A Yes, I believe they belonged to the NAIU.

Q NAIU?

A Independent union.

A Do you know what union it was?

A Do I know what union it is?

[52] Q Yes.

A No, I'm not familiar with it.

Q You've never told that they have a contract with a union?

A They belong to the – I understand they belong to the NAIU.

Q On what –

A I've never seen a copy of the contract, no.

Q On what do you base your knowledge that they have any contract with the NAIU?

A Because they hire out of the hall.

Q What hall?

A The hiring hall.

Q Some NAIU hiring hall?

A I guess.

Q Do you know?

A No, I don't even know where it's at.

Q So, you've never been down there?

A No.

Q And, you've never called there?

A No. I have the number but I have never called.

Q Who would do all of that? Mr. Velluntini?

A Frank? Yes.

Q So, it would go along that you've never adjusted any grievance for any union disputes?

[53] A Oh, no.

Q You've never bargained for any contract with any union?

A No, that's not part of my function.

Q It's not your function at all?

A No.

(Pause.)

Q Now, out on the Aerojet job—and let me direct your attention primarily from the time that you started out there to mid-December, when you were cited.

A Um-hmm.

Q You were cited on December 14, 1982, I think that's in the records.

A Yes.

Q Okay.

Directing your attention to that period of time, is it accurate to say that you never hired anyone or fired anyone during that period of time, did you?

A Yes, I had a crew on the job.

Q Well, you got the crew from where?

A From the shop.

Q And, who had that crew there? The crew was there, were they not?

A No, I was there. At that particular time I was there with the crew, I was running the job, at the time that I was [54] cited.

Q But, the individuals on the crew when you started out there in November, how did—Royal had somehow gotten those individuals, had they not? The Velluntini's had—

A At the time that I was cited I was already employed as a supervisor on the three projects.

Q Okay.

At the time you started in November was there a crew?

A No.

Q And, did the Velluntinis then get the crew from the hiring hall, or do you know how they got the crew?

A I requested the manpower and they would send them out and then I would interview them, and if I didn't like them I would return them.

Q Okay.

But, you had no idea what their work was like when they came out, did you?

A No.

Q So they went to work?

A Under my instructions.

Q When they came out they went to work?

A Yes.

Q And, you don't know how they were hired actually, whether they were hired off the street or through some hiring hall or how?

[55] A No, I don't.

Q Now, from the time that they were hired out there—you know, hired from the Velluntinis—and sent out to this job site that you were out on—

A Um-hmm.

Q —from that time in November until December 14th approximately did you fire anybody?

A No.

Q And, between that time period you obviously never called the hiring hall, because you didn't have their nunber, and you never went out to the hiring hall to get any additional men, did you?

A I had two already.

Q So, there were only two out there at that time?

A Yes, at that time.

Q There were just the three of you from mid-November to mid-December?

A Off and on.

Q Off and on, sometimes less than three?

A No. Off and on on a day to basis, it depended on the job.

Q Well, this is all at the Aerojet?

A Yes.

Q And so, from mid-November to mid-December there was yourself and these two other fellows?

[56] A Yes.

Q What were their names?

A I don't recall right off.

Q No recollection at all?

A No, I deal with so many men.

Q Okay.

So, there was yourself and those two. Do you recall anyone else out there from mid-November to mid-December?

A (Pause.)

You mean as far as crew?

Q Yes.

A No.

Q So, there were the three of you?

A Yes.

Q And was this on all three projects at that time, or just one of them?

A Well, one overlapped the other one.

Q So, the three of you working on the three projects?

A Yes. Well, the large project, the lighting project, I peaked out at seven men.

Q Well, I'm just directing your attention to that period of time right now, from mid-November to mid-December.

A Right.

Q There was no peak-out then, was there?

A I would say probably two to three.

[57] Q So, yourself and these two others—

A Right.

Q —were they then working on the vacuum pump, the substation and the relighting job?

A No, the relighting job was not out to bid then.

Q Okay, so there was just the vacuum pump and the substation jobs?

A Right.

Q The three of you were out there working on those two jobs?

A Yes.

Q Okay.

Now, did you transfer at any time to some other job those other two fellows between mid-November and mid-December?

A Depending on the work scope I would send them back into the shop.

Q Okay, so there were times when it was only yourself and one other fellow?

A Right. And sometimes by myself.

Q Sometimes by yourself?

A Yes.

Q Now, when you were out there by yourself was it the substation job you were working on or was it the—

A At the time I was cited it was the substation job.
[58] Q And, at that time it is correct to say that you were installing a disc connector or mounting a disc connector?

A No, I was checking the secondary buss ties between the primary and the secondary panels.

Q Well, you were taking on and off a panel, were you not?

A Yes, right. Access cover to a panel, right.

Q It's accurate to say, isn't it, that a Journeyman or anybody would have to take off a panel to install wire and that would be a typical—

A Yes, right.

Q And, that's what you were doing at that time?

A Yes.

Q And, at that time you were carrying your tools, you were carrying your tool belt, weren't you?

A No.

All I had was my screwdriver and my sidecutters.

Q Well—

A And possibly a pair of channel locks. I sometimes carry my pouch.

Q Well, your pouch was out there, wasn't it?

A Probably in my truck.

Q You carry your pouch in your truck, don't you?

A Yes.

Q Every day you have your pouch of tools in your truck, don't you?

[59 A Not always, depending on what I have planned for the day. If I have to access to panels and switch gear and stuff like that then I have to, you know, have the necessary tools to have access to them.

Q When there are only just the two of you out there or the three of you out there you would carry your pouch, wouldn't you?

A No, not really.

Q Not necessarily?

A No, mostly the plans.

Q But, the only tools that would be necessary to install a disc connector, or inspect a disc connector, would be—for any Journeyman it would be pliers or—

A Yes, screwdriver, a pair of pliers, side cutters.

(Pause.)

Q Was there any heavy work done at all from mid-November to mid-December?

A Setting the three pieces of the switch gear.

Q That was kind of heavy?

A Yes.

Q Could one man do that himself?

A No.

Q So, would you help out whoever it was out there?

A Just as far as instructing as to how to go about it.

Q Well—

[60] A It was done primarily with a forklift, heavy moving equipment.

Q Well, I mean if there was something heavy—was there any heavy conduit out there or anything to move around?

A Yes. Usually two men handle it with no problem.

Q But, if it was yourself and one other man you would help him, wouldn't you?

A Not necessarily.

Q You would make him do it himself?

A Or I would, you know, request—I usually would try to request somebody else. I usually try to man my jobs, you know, sufficiently.

Q If it was too heavy for him to move what would you do?

A If I need to men I'll call for two men.

Q But, if there was conduit there and it was heavy and he had to move it would you help him move it or would you just go call and get someone there to move it for five minutes of that day?

A I would probably call somebody to help him move it.

Q Did that ever happen?

A Possibly.

Q Did you ever call anybody during that period of time?

A Possibly.

Q But, you don't recall more than two or three people from mid-November to mid-December?

[61] A (Pause.)

Not right off-hand, no. Without, you know, my daily timesheet I wouldn't know whether, you know, there was four there or—

Q Did you bring your daily timesheets?

A No, I didn't.

Q Do you know where they are?

A What's that?

Q Your daily time logs?

A It was quite a while ago.

Q Do you keep them?

A Usually.

Q What do you do with them?

A Just throw them somewhere.

Q You just throw them somewhere?

A Yes.

Q Nobody looks at them?

A Oh, no. They're just mine, my personal notes on the job.

Q So, you're not told to take any time logs for anybody?

A I do now, yes.

Q But not then?

A No.

I kept the daily timesheet, which the office has those. And as far as any personal problems or anything like that I [62] just logged it down for my own knowledge, to refresh my memory.

Q Okay.

(Pause.)

Now, when you first went out there to the job you were not pulled aside by Mr. Velluntini and specifically told, I mean, you weren't specifically told, "Albert, you may hire, you may fire, you may authorize overtime", you were just told, "This is the job, there's two other guys out there", weren't you?

A No.

Q What did he tell you?

A We met at the office.

Q How long did you meet?

A Oh, a couple of hours in his office.

Q And, this was the first time you were hired?

A Yes.

Q You never worked there before?

A No.

Q And, did he give you any written statement of your job duties?

A No.

Q So how do you—

A I don't have a contract with him, if that's what you're referring to.

[63] Q No.

Did you just assume what your duties would be, then, generally?

A No, I know what my duties were—

Q I know—

A —they stated.

Q Who stated what?

A They stated that I would be in complete control of the supervision, the manpower and the material.

Q And, that's basically what they stated?

A That's right.

Q Who is "they"?

A Leo and Frank Velluntini.

Q Now, when you worked on again and off again, as you stated you have, how does that work? Do you just decide when you are off or on, or do they?

A If I was on, um-hmm.

Q What happens when you're off out at the Aerojet job?

A I'm usually home working on my house. I'm in the process of building my own home.

Q And the work continues?

A If I'm not there then there's no crew there.

Q The work—

A If the job warrants four hours a day then I'm there four hours either by myself or with the crew, and that's [64] primarily what they pay for.

Q Now, for this particular job you stated that the plans and specs were complete, they were fairly complete and straightforward, were they not?

A Yes. Well, specs are specs. It's just, you know, stipulations that they want you to use certain types of materials.

Q So, there was—so, it would be accurate to state, then, that the specifications would show exactly where the lighting panels would go and show exactly where all of the fixtures would go and those kinds of things?

A No, all the specs do is call out how the job shall be done and what type of materials will be used on it. Now, on the plans it shows the locations of these items. But, in most cases when they've drawn their drawings you're going into an existing building so you don't know where the old stuff goes.

So, therefore you have to open the panels and inspect all the old stuff in order to relocate it.

Q Is this pretty routine as to how an Electrician—

A Yes. Especially on this particular one, it was sort of like a remodel, you know. On a new construction job it would be, you know, pretty well cut and dry.

Q So, in your experience as an Electrician this would be a more routine remodel job as opposed to a more complicated [65] new construction—

A Yes, I would say so.

(Pause.)

Q Now, as any owners is it accurate to say that the Vellunitinis would have the ultimate veto power, would they not, over anything that goes on on that job if for some reason they wanted to?

A Yes, they could write me my check.

Q And, they could make any other decisions out there, certainly?

A Of, sure. No doubt, being the owners of the company.

Q And, do they generally like to know what's going on out there?

A That particular job it was pretty much involved and they, you know, pretty well let me run it the way I see fit.

Q Was that because it was a routine job?

A No, they do that with just about all of them.

Q But, they didn't anticipate any problems on that job?

A No, it was a fairly simple job. It was just a matter of taking down fixtures and putting new ones up or something, rewiring.

Q There were no safety complaints between—

A No.

Q No.

A Just the only problem I had, I'd say, was the hardhats. [66] They had a Safety Engineer who would go through the building probably a couple of times a week and he'd spot one of my guys without his hat on and he'd come over and say—in fact, he even caught me a few times.

Q You mean he told you to put on your hardhat?

A Yes.

Q Well, on a job that's so cut and dry and routine how much time—you don't need to spend a lot of time with plans and specs, do you?

A Well, plans I do. Because, like I say, I'm usually trying to stay ahead of the crew all the time. Before they get to a particular situation where they have to tear out fixtures I have to go back and relate to the drawings as to what has to be removed and relocated and make sure the power is turned off of all these units, so they don't get electrical shocks.

Q You'd be out there on the job walking around a lot?

A Right.

Q There wouldn't be any need to sit in the office for eight hours looking at the plans and specs, you would have them out on the job?

A Well, at that particular point in time I had a golf cart.

Q You had a golf cart?

A Yes.

[67] A seven and a half acre building is pretty large.

Q But, then when you got to the actual site you would be walking around with your screwdriver and opening up panels and undoing panels?

A Yes.

Undoing panels, making sure that all the circuits are shut off.

Q Now, undoing a panel and making sure a circuit is turned off, it's your experience as a Journeyman that would be something that all Journeymen should do before they, for instance, start reconnecting lighting or connecting wires? They would go in and make sure a panel is turned off, wouldn't they?

A Yes.

Q So, if any Journeyman is assigned to, for instance, rewire an existing panel he would go and take the panel off and make sure it was turned off, wouldn't he, or she?

A Not necessarily.

Q You would hope that he or she would do that?

A No, I usually do that all myself on all my jobs.

Q But, if a—you know, as a Journeyman for twenty-four years would you not make sure—

A If I was working alone, sure.

Q And, you would assume that most Journeymen would make sure—open up the panel and make sure it was turned off [68] before he put in a wire?

A Right.

Q This drinking incident where you told the individual?

A Yes.

Q Was this one of these two fellows that was with you that first month?

A No.

This was later on the lighting project.

Q When did that lighting project start?

A Roughly, I think it ran between November through February, about the 20th of February. That was the final. We had April 15th and we finished thirty days—

Q But, this happened sometime after that first month? What, it happened sometime in January?

A Yes, probably sometime in January.

Q And, this fellow who was scared of heights, was that one of those first two fellows?

A No, that was one of the lighting crew.

Q So, again, in January sometime?

A Right.

Q Now, when did Jack McAtee ask for this promotion?

A He didn't ask for it.

Q Well, was that—

A The problem arose through the office, that they were starting another job and I hadn't completed out

there. And, [69] they asked me if I thought there was a qualified Journeyman on the job that could handle it. And, I suggested McAtee.

Q When was this, recently?

A Yes, this was to completion probably in February. He's one of the few I kept.

Q And, Stan? When was that, also recently?

A That was probably in December.

Q Late December?

A Somewhere in there.

Q And, you at no time authorized overtime, you were asked that?

A Yes.

(Pause.)

I can.

Q But, you never did it?

A No. No reason to.

(Pause.)

Q So, would it be accurate to say, then, that you used your tools up to about ten percent of the time, maybe less?

A Probably less.

Q But, up to about that?

A Well, between using the tools and instructing the crew with the tools of the trade I would say probably somewhere in that vicinity.

Q And, when there were less people on the job that [70] percentage may be higher, and when there are more people on the job that percentage may be lower, is that accurate?

A No, not really. It's pretty much about the same.

Q But, there's less to instruct, there's less to show when there's only two people on the job, isn't that true?

A It depends on the individual. Sometimes I don't have to show them anything, some are more qualified.

But, if I put them somewhere doing something that they're not qualified in then I'll have to instruct them in how to do it.

Q But, there would be obviously less to go over—

A You could probably say a percentage, sure.

Q It would be—

A It would be obvious.

Q It would be higher when—you would be more likely to—

A Ten percent, I would say—yes, if I peaked out at ten, seven to ten guys.

Q I'm not quite sure I understand that.

A I beg your pardon?

Q I's not quite sure I understand your answer.

A Well, with a larger crew I would have more instruction time, is what I'm saying, than I would with a nominal crew of just two.

Q But, if there were less people out there there would also be less to—

[71] A Instruct.

Q Well, and less to supervise, so to speak?

A Yes.

(Pause.)

MS. SURE: I have no further questions.

JUDGE POLLACK: Any redirect?

MS. WATSON: Yes.

REDIRECT EXAMINATION

BY MS. WATSON:

Q Did you have the authority to call the hall, the NAIU nall, for any employees?

A Yes, if necessary.

Q Why did you never call them?

A There was really no need to.

Q Why was there no need?

A I would usually contact the office and get the necessary help I needed.

Q And the necessary help would be people that were already on the payroll?

A Yes.

Q When you started the Aerojet job and there was no crew who was it that determined the number of people that were needed for that job?

A I did.

Q And, who was it that determined the qualifications [72] that the people needed?

A I did.

Q When you were out on that Aerojet job by yourself what were you basically doing?

A Researching the job.

Q What did that entail?

A Like I told her, running down circuiting, trying to coordinate things with Aerojet as far as material flow to us—you know, they were the primary supplier of all the material—and make sure everything fell together.

Q Were you actually installing any electrical panels or conduit or anything while you were out there by yourself?

A No.

Q When you were out there with just one or two other people were you actually installing any electrical conduit?

A No.

Q When you were, on December the 14th, inspecting those buss ties using your tools—

A Yes?

Q —were you actually installing anything into that panel?

A No, all I did was—I believe I had a screwdriver and a pair of sidecutters and I was on top of a six-foot ladder. Primarily what I was doing was checking the alignment on the busses for the ties, that was my purpose.

[73] Q What was the purpose for inspecting all of these panels and making sure that the electricity was cut off instead of having the Journeyman Electrician do that?

A Usually I prefer doing it myself because I could be held responsible for injury to a party. And I'm more familiar with the job, and that's basically my job as Job Supervisor.

Q Now, you had worked for Royal before you worked at the Aerojet project, right?

A Yes.

Q Did Royal call you and offer you the Aerojet job or did you call in and say, "I want to come back to work", or how was this arranged?

A They called me.

Q And, what did they say to you?

A They asked me if I would be interested in going out to Aerojet and running a small job for them.

Q Now, when they—had they offered you jobs like this before?

A Yes.

Q Had they ever called you and offered you a job—

MS. SURE: Objection; irrelevant.

We have no time frame on any of this.

JUDGE POLLACK: Well, let's wait until she finishes the question, for one thing.

[74] BY MS. WATSON:

Q Had they ever called you and offered you job as a Journeyman?

A Yes.

Q When you work on and off for Royal are you working on a per-job basis until you complete a job?

A No, it's usually—what do you mean? I don't quite understand the question.

(Pause.)

Do you mean am I going to stay until the finish of the job?

Q That's correct.

A Yes.

Q You don't just pick up and leave and work on your house in the middle of the job, is that correct?

A Well, if the job reaches a point where it doesn't require any manpower then I will pull off.

Q But, do you normally stay until the job is completed?

A Yes.

Q Now, this building at Aerojet, you said it was seven and a half acres?

A Yes.

Q How big—how many plans were there?

A There was a total of six.

Q Large blueprints, or how big in size?

[75] A It was cordoned, broke up in sections.

Q Can you describe that for us a little bit better?

A Well, on that large of a building when they scale it out they can't possibly put it on one sheet. So what they'll do is they'll break it up in like a quarterly section, or on highrises or, you know, on large buildings they will do it by floor level.

But, in this particular building, being it was one level, they did it in different sheets. They put a portion of it on each drawing.

Q And, besides those plans you also dealt with the specifications, right?

A Yes.

Q How big was a packet of specifications?

A Oh, probably about that big.

JUDGE POLLACK: Well, what's that, is that an inch and a half?

THE WITNESS: Okay, an inch and a half, yes.

BY MS. WATSON:

Q During November and December when you were out there on Aerojet when you used your tools what did you use them for?

A Mostly inspection purposes.

Q Have you run more than one job at a time for Aerojet.

MS. SURE: Objection. No time frame.

[76] MS. WATSON: At any time.

MS. SURE: Well, objection, then.

JUDGE POLLACK: Let's find out the answer first and then if the answer is yes we'll find out what time frame.

THE WITNESS: What was the question?

BY MS. WATSON:

Q Have you run more than one job at a time?

A At Aerojet? Yes.

Q At any place other than Aerojet for Royal?

A No.

MS. WATSON: No further questions.

REDIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q Have the Velluntinis ever informed you of your authority to adjust grievances with Union representatives on the job sites?

A No.

Q They have not informed you?

A That doesn't involve me.

Q Given your experience at various jobs you worked for Royal, including Aerojet, do you believe you have the authority to adjust –

MS. SURE: Objection.

MR. NOVOTNY: – grievances with Union representatives?

MS. SURE: Objection. That's leading.

[77] JUDGE POLLACK: Sustained.

He's just testified he hasn't discussed it with them.

MR. NOVOTNY: Well, on the basis of his experience, though.

BY MR. NOVOTNY:

Q Would it be something that you would do without checking—

MS. SURE: Objection.

JUDGE POLLACK: Sustained.

BY MR. NOVOTNY:

Q Do you have the authority to adjust personnel disputes on the jobs you work on?

A Yes.

Q Do you have the authority to adjust problems over working conditions?

A Yes.

Q Does anybody from Local 340, any officers or representatives, to your knowledge asked you about your job status with Royal since November of 82?

A No.

* * *

[83] **RECROSS EXAMINATION**

BY MR. NOVOTNY:

Q Mr. Schoux, when you first came out to Royal did you have any discussions with them about the fact that you were an IBEW member?

A No.

Q None at all?

A No.

Q Did they know that?

A No.

Q So, did they ever tell you anything with respect to whether or not you'd be subject to Union discipline for working out there?

A No.

Q And, when is the first time they told you that maybe you could get out of the Union discipline, or that—

MR. NOVOTNY: Objection.

JUDGE POLLACK: Let her finish the question.

BY MS. SURE:

Q Or that they could assist you in getting out of the Union discipline.

MR. NOVOTNY: Objection.

There's no foundation that they ever did tell him that.

JUDGE POLLACK: I'll overrule the objection.

[84] BY MS. SURE:

Q When is the first time that they told you that they could assist or that they could get you out of Union discipline somehow?

A Right after I received the citation.

Q And, they told you at that time that maybe you could get out of it because if you claimed that you were a supervisor that the Union couldn't do anything with you?

A No, they didn't say that. They just said that there were a lot of legal actions that we could take. You know, they gave me a course to take other than the Union, so I decided on it.

Q Well, they said that there were legal actions that you could take, and then they wrote this letter for you?

A Yes. They told me I could fight it with the NLRB.

Q And, did they tell you on what basis they thought you could get out of the Union fine.

A No. They had no way of knowing that.

Q Well, they wrote this letter for you, though?

A Yes.

Q And they told you that this letter would do it?

A No.

Q They told you that filing the charge would do it?

A No, they just said that this was my avenue of defending myself.

[85] Q And you said fine and then you signed it?

MR. NOVOTNY: I'll object.

This is irrelevant.

JUDGE POLLACK: Overruled.

BY MS. SURE:

Q So obviously you said fine and then you signed it, if that's an avenue that can get you out of Union discipline, is that correct?

A Well, my understanding at the time was that, you know, this wasn't going to eliminate the fine or any other problem, this was just my avenue of defending myself, my status at the job.

Q And, they told you it was your avenue and that's why you took it?

A Well, they suggested, if I wanted to do it. You know, there's court costs and there's lawyer's costs and, you know, there are other things to be determined.

Q But, there would pay for that, wouldn't they?

A No. Oh, no.

(Pause.)

Q Now, when Ms. Watson first asked you about when you started the job in November you stated that the office interviewed prospective people to come out there, correct?

A Yes.

Q So, they determined initially the qualifications, they [86] interviewed.

A Usually what they discussed primarily is the wages and the type of work that's going to be done. And as far as what I determine is whether they'd get the job, whether they were qualified as far as I am concerned, whether they can do the job or not.

Q But, they made some kind of initial qualifications screening?

A Yes, they usually take care of the paperwork, as far as the W-2's and, you know, the benefits and things like that.

Q In terms of the wages, do you have any idea what scale they are paid?

A It varies. I believe they have four or five different classes.

Q And, who sets all that, the office?

A Yes.

The office and, I think also the hiring hall.

Q When you say that you make more than that, is that more than – more than which classification, do you know?

A Fifty percent more than a Journeyman, which is at fourteen-thiry-five ($14.35).

Q So you make fifteen percent more than –

A Fifty.

Q Fifty percent more than $14.35.

A Yes, I'm presently at twenty-one dollars an hour.

[87] Q Is that a package?

A Just an hourly rate.

Q Do you get fringe benefits at all?

A No.

Q Do you know what the present Journeyman's scale is for the Journeymen out there?

A I believe it's somewhere at fourteen.

Q About fourteen?

A Yes. Fourteen without fringes. I'm talking about the actual base pay.

Q But, you don't have any firm recollection because you've never seen their contract?

A No.

(Pause.)

I don't deal in payroll, all I do is turn in their time and pick up their checks and disburse the checks to the men.

Q Now, on a remodel job is there any new installation to be done?

A Oh, yes.

Q There is?

A Yes, usually you have to tear out a portion of existing stuff and a lot of times you can take advantage of existing conduits, pull out the old wire, pull in new wire. And you have to extend it, you know, or relocate it.

[88] Q You said you were checking alignment of buss or ties?

A Yes, buss ties, right.

Q Buss ties?

A Yes.

Q Okay.

What is that?

A Okay, at this particular substation I was working on had three primary units. They had a high voltage section and it has a transformer, because there is twelve-thousand coming in—a large transformer—and then it had a secondary section, which was a distribution for the new equipment in the building.

And, these three units come separately shipped on account of their weight. The whole thing was fifteen feet long and six feet wide.

Q That kind of work would be typical work of a Journeyman, to check alignment of these things on buss ties, is that what it means?

A It could be, yes.

But, rather than pull a Journeyman off a Journeyman's job from being productive why not just do it myself?

MS. SURE: Yes, okay.

No further questions.

* * *

[85] LEO F. VELLUNTINI

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Please give us your name and address and spell your last name.

THE WITNESS: Leo F. Velluntini, V-E-L-L-U-N-T-I-N-I. I reside at 2429 39th Avenue, Sacramento, California.

DIRECT EXAMINATION

BY MS. WATSON:

Q You are with Royal Electric?

[90] A Yes, I am.

Q What is your position with Royal?

A I am one of the owners.

Q Did you hire—

MR. WATSON: Excuse me, can we go off the record for a monent?

JUDGE POLLACK: Off the record.

(Discussion off the record.)

On the record.

BY MS. WATSON:

Q and, the other owner is?

A Frank Velluntini.

Q Did you hire Mr. Albert Schoux?

A A combination of Frank and I, we did it together, yes.

Q And, when did you first hire him?

A We first hired him—I can't give exact dates—somewhere in October or November of 1982.

Q Had he worked for you prior to that?

A No.

Q And, did you discuss with him when he was hired what his job duties and his authority would be?

A Yes, we did.

Q What did you tell him?

A That he had complete control of the jobs that he would be handling when he was working for us. At that time we [91] discussed his job duties, that he would run anywhere from one large job to many jobs if necessary.

Q Do you have any other Foremen who work for Royal Electric?

A We have some other Foremen, yes.

Q How does their authority compare to Mr. Schoux's?

A None whatsoever. They report to Mr. Schoux.

Q Would they be able to request extra employees directly from the office?

A They would call the office, they would definitely not call the hall. They would call and discuss with us or with Al Schoux whether or not there were more people needed for that particular job.

Q Does Mr. Schoux have the authority to call the hall if necessary?

A Yes, he does.

Q And, in what kinds of situations would he have the authority to do so?

A At any time that he decided that he needed additional help and if he was aware of the fact that we didn't have additional employees in our shop, in our pool of men, that we could send to the job. We try to keep our crews as permanent as possible and working for us steadily, so we do try to move people from job to job.

If these men are not available he would call the hall [92] to hire people.

Q And, none of your other Foremen have that authority, is that right?

A No, they do not.

Q Do any of your other Foremen have the authority to fire someone on the job?

A We prefer that they don't. We will back their word after we've discussed it with them. If something serious has happened and the man says, "You're fired", we'll hear it and then either agree or disagree. If it's a serious offense, yes, they do have the authority. But otherwise, no, they would not have that authority.

Q Now, when Mr. Schoux was hired did you discuss the amount of work that he would be doing with the tools?

A No, not really.

We discussed the fact that he would be our supervisor on the jobs and that he would be on the jobs, because of the particular size and nature of the jobs, that required a full-time person with the intelligence to do the job properly.

The job actually was a little more intricate than Al had said that it was and it took a lot of coordination between our company, our subcontractors on the job—the high voltage contractors, the draying company that we had subcontracted to to set the switch gear, and in another case the backhoe operators and people who come out and work for [93] us during that process of the job.

Somebody had to be there to be sure that that job was done properly, it wasn't one that could be left to run by itself.

Q And that person who was responsible for coordinating all these things was Mr. Schoux?

A Yes, it was.

MS. WATSON: I have no further questions.

DIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q Did you discuss Mr. Schoux's authority to adjust grievances on the job when you hired him?

A I believe my word to Al when we first hired him was: "The job is your problem. We're hiring you because we know that you can handle it, we feel that you have the capabilities of doing it. You handle it and we don't want to hear about it. Unless it's something that's really serious, you can adjust anything you have to out on the job. You can call for a check, send a guy home, you can do anything

you want on that job. You also coordinate with inspectors, engineers, and any of the Aerojet personnel." Which he did.

Q Did you tell him anything else regarding his grievance adjustment authority for Royal Electric at that time or any time since you hired him?

A Would you say that again, please?

[94] Q Did you tell him anything else regarding his authority to adjust grievances between employees at that time or at any other time since he's been employed?

A I didn't have any other conversation with him, no.

MR. NOVOTNY: Nothing further.

MS. SURE: Has Mr. Vellunitini given any statements?

MS. WATSON: Yes.

(Hands to Ms. Sure.)

MS. SURE: Could I have one moment?

JUDGE POLLACK: All right, off the record.

(Off the record.)

Back on the record.

CROSS EXAMINATON

BY MS. SURE:

Q Mr. Velluntini, how long have you been one of the owners of Royal?

A Since its establishment. 1971, I believe it was that Royal was established.

Q And, from 1971 to September of 1981 was your company under contract with a contract with the IBEW 340?

A I believe that that contract had expired prior to September of 1981.

Q So you had no contract as of what time?

A As far as I would assume—I don't know exactly, I think we're still discussing all of this, but—

[95] Q June, do you think it was June?

A See, the contract ran out May 31st and as far as I was concerned then we had no contract after that.

Q And as far as you're concerned now there is no contract with the IBEW?

A That's right.

Q And, are you under contract with any other labor organization?

A Yes, I am.

Q What organization is that?

A I'm a member of NECA and we're signed with the National Association of Independent Unions.

Q Since what date have you been signed with them?

A With the NAIU?

Q Yes.

A From the first day that NECA signed with them.

Q Do you happen—have you ever seen a copy of that contract?

A Yes, I have.

Q So, since October of 1981 have your men been covered under that contract?

A Yes, they have.

* * *

[99] BY MS. SURE:

Q To the best of your knowledge after May 31, 1981 you have had no contractual agreements with the IBEW 340?

A No.

Q In fact, were your employees represented by the IBEW 340, do you know?

A At this time, today?

Q At this time.

A No, they are not.

[100] Q And, in December of 1982 were they?

A No.

Q Since September of 1981 did any Union official ever—well, strike that.

Isn't it true to say that since September of 1981 no IBEW Local 340 official ever told you that they felt that you were under contract with the IBEW 340?

A No.

Q No one ever indicated to you—any official from the IBEW 340—that they desired to have a contract with you?

A No.

Q Nor did any Union official ever indicate to you any desire to represent your employees?

A No.

Q And, you have felt no bargaining obligation to the IBEW 340 since September of—

A I have not.

Q That's a no? Since mid-81?

A Would you say again? I may have misunderstood you, I'm sorry.

Q I just want to make sure my question was out before you said no.

You have had no bargaining obligation with the IBEW Local 340 since mid-1981?

[101] A No, I have not.

Q And, it would be therefore impossible for anyone employed by you to settle any grievances with IBEW 340 since mid-1981?

A No.

Q Nor would it be possible for any employee of your's or yourself to negotiate a contract right now with IBEW 340? You wouldn't direct any employee, would you, to go and negotiate a contract with IBEW 340?

A No, I would not.

Q And, that includes Mr. Schoux?

A Mr. Schoux can do whatever he wants. I couldn't—

Q But, can he do it on behalf of Royal Electric?

A No, I don't suppose that he could.

Q Well, could he or couldn't he? Could he go out and sign a contract for Royal Electric with IBEW 340?

A No.

(Pause.)

Q Could anyone other than yourself or—is Frank your brother?

A My son.

Q Your son.

Could anyone other than yourself or your son negotiate with a labor organization on behalf of Royal Electric?

[102] A Could you repeat that again, please?

Q Could anyone other than your son or yourself be in the position of negotiating?

A Yes, I am signatory to the NECA agreement and they could—

Q That's not my question.

A Sorry.

Q Could anyone other than yourself or your son go out on behalf of Royal Electric and negotiate a contract with a labor organization? Would anyone else have that kind of authority for Royal Electric?

A (Pause.)

Again, I'll have to say yes.

Q Who?

A The association that I belong to.

Q Okay, would Albert Schoux have that kind of authority?

A That was never discussed. I would say no, he does not have that authority.

Q So, whatever the IBEW—whatever contractual agreements the IBEW has with other employers, that would have no effect on your business now and it wouldn't have since mid-1981?

A That's true.

Q Now, you stated that Mr. Schoux would have the authority to call the hall and get men. But, you never gave him the telephone number of the hall, did you?

[103] A He has the number.

Q Did you hand it to him?

A I didn't hand it to him, no.

Q How do you know he has it?

A I would have to assume that he has it, or has the intelligence to call and find out where it is and to call them.

Q But, you've never told him where it is. Would you be surprised—

A It wasn't actually—

JUDGE POLLACK: Wait. Again, one at a time.

BY MS. SURE:

Q You've never told him the number for any place to get men, have you?

A I did not. I don't even know the number.

Q You don't know the number?

A No. I would have to look it up.

Q Who may know the number?

A Anyone with access to a telephone book.

Q Well, who in your office?

MR. NOVOTNY: Objection.

JUDGE POLLACK: He said he would have to look it up. What do you want to ask him now?

BY MS. SURE:

Q Have you ever called any hiring hall for men?

[104] A Yes.

Q And, where have you called, do you know?

A Yes. I have called the NAIU hiring hall, which is in the NECA Building here in Sacramento.

Q But, you don't recall ever giving Mr. Schoux that number?

A I personally did not give him that number.

Q Are the men out working for Royal Electric, are they all hired out of the hiring hall that you're talking about or are they hired other ways?

A They are not almost entirely hired through that hiring hall. For a period of time there weren't any men available and we had to hire our own people and then refer them back and they signed and became a member of that union. So, for a period of time we were hiring people by taking applications, screening them, reviewing them, and if we wanted them then we would send them in to clear out through the hall. And that would be the—

Q What period of time was that?

A (Pause.)

Oh, the first six months or so—maybe a little longer—of the establishment of that hiring hall. Because it was so new.

Q Are you talking about 1981?

A Yes.

[105] Q Okay.

Directing your attention to November and December of 82 on the Aerojet job?

A Yes.

Q Now, at that time that was the only job Mr. Schoux was assigned to, was it not?

A At that time it was, yes.

Q And, at that time there were no other Foremen that were responsible to him, were there?

A To him?

Q Yes.

A No.

MS. SURE: No further questions.

REDIRECT EXAMINATION

BY MS. WATSON:

Q Mr. Velluntini, is Royal Electric a member of the NECA, Sacramento Valley Chapter?

A Yes, we are.

Q How long have you been a member?

A We joined, I believe—I'm not absolutely certain. It could be July, August or September of 1981.

Q Of 1981?

A Yes.

Q And, after September of 1981 did you sign any new document making the NECA your bargaining agent for a new [106] contract?

A Yes.

Q Do you recall what document that was?

A It was—no, I don't recall what document.

Q Do you consider NECA to be your bargaining agent?

A Yes, I do.

Q How long have they bargained contracts on your behalf?

A They bargained on my behalf for several years. I dropped out of the organization in the early 70's—72 to 74, somewhere in that area—because it wasn't financially practical for me to belong at that particular time. I was then a member of NECA and they did represent me.

Q When did they begin to represent you again as your bargaining agent for the contract?

A Prior to the termination of our contract when they went into the negotiations and it was posted as who was members of Letter of Assent A. Our company name, Royal Electric, was listed as such and we thought about it and checked and were told, "Well, you've got the A and you've got it." You know, "We will represent you."

It was listed and there was never any objection to that by anyone.

JUDGE POLLACK: Are you talking about, now, May and June of 81?

THE WITNESS: Yes.

[107] JUDGE POLLACK: All right.

THE WITNESS: Or even prior to that when negotiations were first opened. And I don't remember when that was, six months prior to the contract expiration, or so.

BY MS. WATSON:

Q And, who did you check this out with?

A We called the NECA office.

Q Did you speak to Mr. Paulsen?

A Yes, I believe so.

MS. WATSON: No further questions.

JUDGE POLLACK: Mr. Novotny?

REDIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q You say you signed a Letter of Assent A sometime prior to your signature of these Letters of Assent B?

A Yes, I did.

Q And, by you signing that Letter of Assent A did you understand that you conferred any authority on NECA?

A Yes, I realized that they would negotiate on my behalf.

Q Okay.

And was that authority to negotiate on your behalf to end with the anniversary date of that agreement or to continue from year to year, to your understanding?

A I wasn't aware of what it really amounted to, whether [108] it was to continue or not. I did not read it that closely.

(Pause.)

MR. NOVOTNY: Nothing further.

MS. SURE: I have a few further questions.

RECROSS EXAMINATION

BY MS. SURE:

Q Now, you recall dropping out of NECA in the early 70's, 72 or 74, and at that—correct?

A Yes.

Q And at that time you recall signing a agreement with the IBEW, don't you? You were still signed to an agreement with the IBEW, correct?

A I was still signed to the agreement that NECA had signed with them, yes.

Q Well, you recall signing an agreement with the IBEW, do you not?

A Are you referring to the Letter of Assent here?

Q It's marked as Respondent's 1.

A Yes, I do recall signing that.

Q Okay.

Now, to your knowledge, during that period of time—up until 1981—is it accurate to say that you felt you were not a member of NECA, you had dropped out of NECA?

A I had dropped out of NECA, yes.

[109] Q And, it was not until sometime in, you said, July, August or September of 1981 that you had inquired about becoming a member of NECA again, is that accurate?

A Yes.

Q And, at that time that you inquired to see if you could become a member of NECA again did you notify the Union about it at all?

A I can't say that I did. You know, I don't recall notifying them. I had no correspondence with the Union whatsoever, never even on negotiations. Nobody ever contacted me.

Q So, to your knowledge the Union, then, would have in its possession the document that I have shown you which is marked as Respondent's 1?

A I guess, yes. It probably did have it.

MS. SURE: No further questions.

MS. WATSON: Just one.

REDIRECT EXAMINATION

BY MS. WATSON:

Q You did not become a member of NECA until July or August of 1981?

A Yes.

Q But, you said you did—your name was on a list listing you as an Assent A signer—

A Yes.

Q —as of prior to the negotiations in the spring of [110] 1981?

A Yes.

Q And, you checked this out and found that this was accurate?

A Yes.

Things were very hectic at that time and I really can't say who I talked to or what. It just did happen, they said, "Yes, you are signatory to it", Everybody had at least assumed that because—

MS. SURE: Objection as to what everybody assumes.

JUDGE POLLACK: All right, sustained.

(Pause.)

BY MS. WATSON:

Q But, you did see your name on a list as being an Assent A signer?

A Yes, I did.

MS. WATSON: No further questions.

MR. NOVOTNY: No questions.

JUDGE POLLACK: I have one.

EXAMINATION

BY JUDGE POLLACK:

Q When the Union struck certain employers in June of 81 was there a strike against your company in well?

A Yes, there was.

JUDGE POLLACK: Anything further of the witness?
[111] MS. WATSON: Yes.

REDIRECT EXAMINATION

BY MS. WATSON:

Q Did anyone from Local 340 ever approach you about signing an interim agreement during the strike?

MS. SURE: Objection.

Beyond the scope of my questioning.

JUDGE POLLACK: No, but mine may have provoked it, go ahead.

MS. WATSON: That's correct.

THE WITNESS: I'm sorry, can I answer this?

JUDGE POLLACK: Yes, you may answer.

THE WITNESS: Would you repeat it?

BY MS. WATSON:

Q Did anyone from Local 340 ever approach you during the strike about signing an interim agreement?

A Yes, one of my employees came in with the interim agreement from the Union hall and asked me to sign it.

Q But, no one actually from the Union approached you?

A No official ever contacted me at all.

* * *

[134] NORMAN NUTTER

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Please give us your name and address for the record.

THE WITNESS: My name is Norman Nutter, I live at 1890 Ridgeview Drive in Roseville.

DIRECT EXAMINATION

BY MS. WATSON:

Q Mr. Nutter, what is your position with Harold E. Nutter, Inc.?

A I am the President.

Q What are your – what is your actual job authority as President?

A I have primary responsibility, short of the Board of [135] Directors and stockholders.

Q Do the day-to-day labor relations and operations of Nutter, are you responsible for that?

A Yes, I am.

Q Are you responsible for hiring Foremen, Superintendents and other employees?

A I do get involved in that, yes.

Q How long have you been in this position?

A As President for approximately one year.

Q And, what was your position before that?

A Vice-President.

Q How did you duties differ when you were Vice-President from now when you're President?

A They were substantially the same.

Q So, you still had the responsibility for hiring and directing the operations of Nutter Electric when you were Vice-President?

A Yes, I did.

Q And, how long were you in that position as Vice-President?

A I don't recall exactly. Three or perhaps four years.

Q Were you working for Nutter before you became Vice-President?

A Yes, I was.

Q In what capacity?

[136] A I was employed as an Estimator/Project Manager.

Q And, how long were you employed in that position?

A I came to work in that capacity in 1975, I believe.

Q Do you know—strike that.

Who is responsible for setting out the requirements and job duties and authority of Foremen?

A I am.

Q And, you have been doing this for how long?

A Since—well, basically I continued the existing policy of the firm when I arrived. It was my responsibility alter or describe that policy at the time that I became Vice-President.

Q Do you have any written job requirements for Foremen?

A Yes, we do.

Q How long have you had these?

A With the inception of the NAIU crew there was some confusion where previously there had been none. It became necessary to compose a document approximately at the end of 1981 or early part of 82.

Q I'll show you a document on the stationary of Harold E. Nutter, Inc., which is labeled "Requirements of Foremen", and I've marked it as GC 11.

(The document referred to was marked for identification as General Counsel's Exhibit No. 11)

[137] Do you recognize that document?

A Yes, I do.

Q Did you prepare that document?

A Yes, I did.

Q Approximately when did you prepare this?

A The document that I referred to was prepared either at the end of 81 or at the beginning of 82.

Q Did you distribute it to all of your Foremen at that time?

A Yes, we did.

Q How many Foremen did you have at that time?

A I don't remember for sure. Approximately ten to fifteen.

Q As new Foremen were hired, or as people were made Foremen later on, did you distribute this to them as they became Foremen?

A Yes, we did.

Q Do you still distribute this to your Foremen?

A At the present time, no. The current members of our work force have become accustomed to it and it's ceased to be a valuable document in everyday distribution. We refer to it only on occasion.

Q And, how long has that been since you've quit distributing it?

A Oh, probably about the beginning of the fourth quarter [138] of 82.

Q Do you know Mel Miller?

A Yes, I do.

Q Do you know how long he's worked for Nutter Electric?

A Yes, I do.

Q How long has that been?

A It's been approximately eight or nine years.

Q And, in what capacity has Mr. Miller worked for Nutter?

A He was employed initially as, and has always remained, a Foreman.

Q Has he ever worked in any other capacity?

A No, he hasn't.

Q Before the strike in 1981 what kind of work was Mr. Miller doing?

A Mel was running a project for us in Redding. It consisted of a Holiday Market – I believe was the name of the market – and a series of shops and some off-site work. A major project.

Q How many employees were on the project, if you know?

A I believe we topped out at twenty or slightly above that.

Q Were there any other Foremen on the project besides Mr. Miller?

A Yes. He had, I believe, one or possibly two Subforemen.

[139] Q Did he have authority over them?

A Yes, he did.

Q And, did Mr. Miller work during the strike?

A He worked for approximately two weeks after the onset of the strike on that project.

Q In Redding?

A Yes.

That project was being handled out of Local 442 in Redding.

Q Now, did there come a time when Mr. Miller came back to work for Nutter?

A Yes.

Q Do you recall when that was?

A I think it was January the 25th, 1982.

Q And, how did he express his desire to come back to work, did he call you or did you call him, or what?

A I believe he called us. He had a chance meeting with Harold in a bank, they chitchatted as old friends. Mel had worked for Harold previously at another employer and they had known each other for twenty years.

Q Now, when you're talking about Harold who are you referring to?

A That would be Harold E. Nutter.

Q Who was the President of the company?

[140] A At that time he was President, yes. And they basically chitchatted and Mel subsequently called the office and he and I talked. He indicated that he was willing to come back to work at that time.

Q Did he say in what capacity he wanted to come back to work?

A He did. He approached me with the understanding that it would be as Foreman, but I forget the exact

dialogue. But, there was a question stated—either a rhetorical statement a question—you know, "Is this going to be like it was before, has anything changed?"

And, I assured him that, no, we had the same respect for his abilities that we always had, that there were no hard feelings of the strike, and that, yes, everything was as it had always been.

Q Did you discuss in any detail what his job duties would be?

A No.

After, say, roughly nine years of employment with us and a previous similar working condition for Harold at as an Estimator at George Foss there was no need for that discussion. It was well-known.

Q Were any differences in duties discussed?

A Only the discussion of concern, "Would there be any difference?" and the answer was no, everything was the same. [141] Except that we needed him more.

Q Did you discuss what his rate of pay would be?

A No.

Again, that was just assumed that he would be returned to the Foreman's wages that he had always drawn. And I directed our secretary that Mel was to be hired an his rate of pay was as a Foreman. He received the NAIU Foreman's rate of pay for a brief period of time.

When I discovered that he was not receiving General Foreman's wages, according to the NAIU contract, I had that raised. That roughly corresponded to the Grade 2 Foreman he had always received as an IBEW employee.

Q Did you discuss with him when he was hired what job, or jobs, he would be working on?

A The job that we had in mind for him was the Mervyn's Department Store at Highway 50 and Zinfandel that was just beginning. I don't recall if I had the first conversation with him or if Ted Choate did.

Q And, did you discuss exactly what the requirements of that job would be, how big a job it was going to be or how long it would take?

A I believe we joked that we had beaten Rex Moore by two-hundred dollars ($200.00) on the project and mentioned the size. But, Mel had done another Mervyn's store for us and he knew what was involved with the project.

[142] Q Now, did Mr. Miller start that Mervyn's job right away?

A That, say, was in the middle of winter and it was the beginning stages of the job. Our payroll records indicate that he spent approximately one week working at United Grocers before he returned to and ran the Mervyn's job.

I believe that someone else had installed the youfaground(ph) and possibly a couple of cans on the project prior to Mel returning to work.

Q On the Mervyn's project?

A Yes. But that was the extent of the work that had been done.

Q When Mel first came in to be hired was he given the plans for the Mervyn's job?

A I don't know.

Q Do you know if he was given any specifications?

A I don't know if he received them at that time. As Foreman on the job he certainly was given them. Whether it was that day or the following day or if they were on the job when he got there, I don't remember. That project was handled primarily by Ted Choate in our office. Ted was the Estimator who bid the project.

Q But, from the first time that – from the day that Mr. Miller was hired he was told about the Mervyn's job, is [143] that correct?

A Yes.

(Pause.)

Q Were there already employees on that Mervyn's job when he –

MS. SURE: I object.

I have not gotten clear as to what time the Mervyn's job was, what the date of the Mervyn's job was. The fine in issue was in May of 1982 and there has been no indication that this Mervyn's job was taking place at that time.

JUDGE POLLACK: All right.

When was the Mervyn's job?

THE WITNESS: The project began in January of 1982 and finished sometime in the summer of 1982.

MS. SURE: Again, there's been no indication that Mr. Miller was on the job at that time.

JUDGE POLLACK: Is that the job that Mr. Miller was on in May of 82?

THE WITNESS: Yes, he was on that job in May.

JUDGE POLLACK: Is that in May of 82 when the conduct was engaged in?

MS. SURE: Yes.

JUDGE POLLACK: All right.

And, these answers you've been giving about Mr. Miller's authority, that would be true in May of 82?

[144] THE WITNESS: Yes. It had always been true.

JUDGE POLLACK: Okay, that's what I thought. Fine.

Let's go on.

BY MS. WATSON:

Q Would they be true for any time period after the time where Mr. Miller was hired in January of 82?

A Yes.

Q Are they still in effect?

A Yes, they are.

Q Now, when Mr. Miller first came back to work for Nutter in the winter of 1982 did he work on any jobs other than Mervyn's?

A Yes.

When Mervyn's was shut down due to weather or the normal start-up delays he filled in at United Grocers.

Q And, what kind of job was United Grocers?

A United Grocers was primarily a distribution facility for grocery products. It contained roughly a half-million square feet of floor space, a separate maintenance building, a separate definable office area, a large general warehousing area, a refrigerated area and a freezer area. Plus the side work, some fifty acres or something.

Q Were there already crews with Foremen on that job?

A Yes, we had substantially started that project in roughly September of 81.

[145] Q Were the crews that were on that job from the National Association of Independent Unions?

A Yes, they were.

Q What was the purpose of sending Mr. Miller to the United Grocers job?

A There were several purposes. The prinicipal one is that the Mervyn's job was not ready. For a week at a time or a day or two it would either be rained out, and as a valuable supervising personnel you'd want to keep him busy so thepaycheck keeps coming and they stay happy. So, you look for an alternative home.

Secondly, United Grocers was possibly the largest electrical project in town at that time. As such, the personnel that we had from the NAIU were being taxed to complete it, although they did so very well, and we were anticipating that Mel's presence there while filling in would have a couple of added benefits.

One, we had a highly qualified person there and, secondly, he would set the standard that the NAIU personnel could seek to achieve.

Q Do you have any—you have other Foremen for Nutter, is that correct?

A Yes, we do.

Q Do you have any other Foremen who have—how does the authority and responsibility of the other Foremen that [146] you have for Nutter compare with the authority and responsibility of Melvin Miller?

A Mel is at the upper crust of that. Of course, various people have various degrees of ability. Mel was and still is the most capable person that we have and in keeping with the degree of ability, the responsibility that goes with it is appropriately altered.

Q Would you say, then, he has more responsibility and authority than your other Foremen?

A There are a couple of other people who share the same degree of responsibility and authority.

Q Has Mr. Miller ever run more than one job at a time for Nutter?

A Yes, on several occasions.

Q Since he came back to work has he?

A Yes.

(Pause.)

MS. WATSON: No further questions.

MR. NOVOTNY: Can the witness be shown General Counsel's Exhibit 11?

(Resporter hands to the witness.)

DIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q Do you remember giving a copy of this document to Mel Miller?

[147] A I do not remember handing him one, no, I do not. But, I believe he did receive one, I can't say from where. These documents were distributed primarily along with the material to the field with the request that the Foremen read them and we would discuss them with them subsequently.

At the initial dispersal of these documents they were allowed to read them and then we had a meeting and discussed it in general at that point.

Q What were Mel Miller's duties on the Mervyn's job?

A He had total responsibility for the project insofar as the field administration is concerned. His principal duties were to coordinate our work with the General Contractor and the various other subs on the contract; it was his responsibility to call for all inspections, to deal with the serving utilities at that level.

He also was responsible for ordering the material for the job; charged with the responsibility of ordering it sufficiently in advance, correct quantities, etcetera; he had the responsibility of requesting manpower, of assuring proper production from that manpower and taking whatever steps he thought appropriate if that production was not met, either in terms of talking with the person, teaching the person, or ultimately firing them if that became necessary.

He also, then, was responsible for laying his crews out and assigning individual work tasks to his people.

[148] Q What were his grievance adjustment responsibilities on the job as you conveyed them to him?

A Well, again, there was no direct conveyance. It had been as it had always been for the previous tenyears with Nutter. And basically that entailed, if someone was unhappy about a work assignment that he'd been give, Mel would handle it; if someone didn't like working with someone else, Mel handled it; if someone thought that Mel was too tough on them that was too bad because Mel was the last resort.

Q Did he have the authority to discipline employees or to recommend discipline?

A He had the authority to discipline and ultimately to fire.

Q Did he have the authority to transfer employees on the job?

A In the sense that it was his obligation to notify us that he had insufficient work for his personnel or that the work that he had, he had the wrong people for in terms of

their qualifications and hence to notify the office that these people were not needed and did we have another home for them. If not, send out there lay-off check.

Q Could he fire an employe for misconduct?

A Yes, he did.

Q Would he have to check with you first?

A No, he did not.

[149] Q And, are these duties generally consistent with his job duties prior to this Mervyn's job?

A Completely consistent.

Q Now, during the course of the United Grocers job did you ever ask Mel Miller's opinions about the other workers out there, Foremen or Superintendents or Journeymen?

A Yes, we did.

We faced what we felt was something of a political question so we used Mel in a covert fashion, you might say. We had established an NAIU crew there of thirty to forty-plus men at the time that Mel arrived. So, the job heirarchy was intact.

The previous 340 crew had been held up as the example for this NAIU crew to try to achieve. As such, we were concerned that if we sent Mel out, who was the most qualified person we had at that time, and had him take over that project that there might be sufficient unrest in the NAIU crew that we'd wind up paying the price, possibly, you know, have the crew say, "Hey, if you want 340 you should have stayed with 340, we're leaving."

And, we had personnel on that job that we felt were qualified. Not as qualified as Mel but the job was in progress and everybody was happy. So, we used Mel to set the example and we did ask Mel's opinion of the Foremen that were on the project for a couple of reasons.

[150] One, were a couple of them were as good and promising as we thought that they were? And, were a couple of others as shaky as we thought they were? He was

also there for the purpose of answering any questions that those Foremen had, and I know that they did ask him many times how to handle a situation.

Q Who reported that to you?

A Well, that was related from Mel in the—

* * *

[151] BY MR. NOVOTNY:

Q Now, turning your attention back to the time that Mel Miller fired an employee on the Mervyn's job, did the employee thereafter come in and talk to you?

A Yes.

He phoned first indicating that he'd been directed to leave the project and not return, that he was no longer employed. And, he was hoping that I would reverse that situation and asked to come in and talk to me. At that point in time I was not even aware that it had happened and so I phoned to the job site and talked with Mel. He explained the circumstances and I said, you know, "Well, Mel, I'm not looking to question your decision. I just want to know what happened so when the guy gets here I can talk to him."

And, the guy showed up and recounted essentially the same facts as Mel except with a different bias. And, I said, "Well, hey, look, Mel's decision stands. If you convince Mel that you repent and Mel decides to give you another chance, fine. Otherwise, you're fired."

Q Do you remember who he was?

A No, I don't recall the name.

MR. NOVOTNY: Nothing further.

MS. SURE: Were any statements given by Mr. Nutter?

MS. WATSON: Nothing.

[152] **CROSS EXAMINATION**

BY MS. SURE:

Q Mr. Nutter, you're aware that the IBEW 340 disclaimed interest in representing the employees of Nutter Electric on September 15, 1982, are you not?

A Yes, I am.

Q And, you're aware, then—

A Excuse me, 1981.

Q 1981, sorry.

And, your're aware that since that time there has been no contract between the IBEW 340 and Nutter Electric with respect to collective bargaining of terms and conditions of employment?

A That's correct.

Q And, in fact, no Union official has ever orally or in writing stated to you that they desired a contract with Nutter Electric?

A I have no contact with Union officials.

Q Since September of 1981?

A Correct.

Q And, in fact, your organization has entered an agreement with some other labor organization, right?

A That's correct.

Q So, there has been no bargaining obligation between your company and IBEW 340 since September of 1981?

[153] A Correct.

Q And, the IBEW Local 340 does not represent the employees of Nutter Electrical since September of 1981?

A Did you say Local Union 340?

Q Yes.

A That is correct.

Q Have you ever authorized—to your knowledge, is anyone authorized, other than Harold or yourself to bargain on behalf of Nutter Electric with any labor organization?

A The National Electrical Contractors' Association, Sacramento Chapter.

Q But, no employee of Nutter Electric?

A No.

Q And, that would include Mr. Miller and Mr. Choate?

A Yes, it would.

Q So, basically you conduct your business as though the IBEW Local 340 did not exist?

A That's correct.

Q And, whatever they do has no effect on your business?

A I don't know if I can go that far. They certainly can affect us. They have not.

Q They have not?

A They did throw the picket on the Mervyn's project that we referred to and it was there for approximately—

Q Well, they have not affected your business?

[154] A —three days.

Well, that had an affect on my business, yes.

JUDGE POLLACK: Don't interrupt his answers. You may not like them and you can move to strike if you have proper grounds, but let him finish.

MS. SURE: All right

BY MS. SURE:

Q That picket was an area standards picket, was it not, the picketing that you were not paying prevailing wages?

A I did not see a picket sign myself, I don't know what they said.

Q Now, at the United Grocers job when you sent Mr. Miller out there he was sent out there to do Journeyman work so that he could show the NAIU guys what a good Journeyman was like and how hard he could work and how much he could accomplish, is that correct?

A Not correct entirely, no.

Mr. Miller was sent out—first of all, let me say that we do not consider a Foreman appointed per job. We consider a Foreman to be a Foreman and he happens to be responsible for a job. But, when we have a Foreman visiting another job he is still there essentially as a Foreman and the practice that we encourage and the one

that, in fact, happened—and I think you can appreciate would logically happen—is, say, Foremen on Job A has Mel show up.

[155] He says, "Great, here's a guy I don't have to worry about. Here's the plans, you go over there and take care of that area." And, basically there has been a de facto segregation, a Foreman should control over a portion of the project.

Q Let me rephrase that question so we can get a little more specific.

Mr. Miller was not the Foreman, he was not directing these individuals out at the United Grocers job?

A Not directly, no.

Q He was not directing the individuals. You did not assign him out there to direct the individuals?

A We did not tell him to take over the project, no.

Q In fact, there were other Foremen directing the employees out there?

A That's correct.

Q So, at the time he was out there he was doing work as any highly-skilled Journeyman who would perform to the best of his abilities?

A Yes.

Q And, he was told to perform the job duties of the highly-skilled Journeyman on that job?

A In that those are incumbent within the duties of a Foreman to some extent, yes.

Q Well, the other duties of a Foreman he was not performing [156] out there to the extent that he was not told to direct the employees?

A He was working with other people on that project and those people, for the political reasons I explained earlier, were not told that "Mel is your Foreman"—

Q Fine.

A —he was de facto Foreman.

Q But, they were not told he was the Foreman—

A That's correct.

Q —and he was told not to direct those individuals with respect—

A That is not correct.

Q Well, there were other Foremen out there who were told to direct those individuals?

A That's correct.

And, they were asking Mel how to go about it.

Q But, those employees may not have known that?

A That's correct.

Q And, Mr. Miller had his tools at all times?

A I presume so, I don't know.

Q But, he was told to have his tools at all times and he was told to be working—

A He was not told that. He was told to go to United Grocers. The presumption was that he would take his tools, yes.

[157] Q And, the presumption was that he would be working out there so that they would know what the example of a good Journeyman worker was?

A He would be working a portion of the time with the tools, yes. It was also presumed that his abilities as a Foreman were also to be utilized. Even though he was not called the Foreman of that job, as I indicated earlier, we considered him to be a Foremen on that project in the broader sense.

To answer officially to other Foremen and ultimately the Superintendent on that job. But, we considered—

Q I think I've gotten the answer. I don't mean to interrupt him—

JUDGE POLLACK: Okay.

MS. SURE: —but he's gone on past my question.

JUDGE POLLACK: I take it from what you said, then, that he received Foremen's pay while on that particular job?

THE WITNESS: Mel has received the highest Foreman's wage every day that he's worked for Harold Nutter.

BY MS. SURE:

Q And, by the highest Foreman's wage you're saying that he was receiving what he would have been receiving had he remained IBEW? I just wanted to be sure of that.

A No.

Q What was your statement, then, in answering Ms. Watson's [158] question? You wanted to make sure that he has been receiving the wages that he's been receiving previously.

A In terms of level of Foremanship. We know that the NAIU wages, of course, are less than the IBEW wages were at that time. As a 340-member – well, 340 prior to the strike had two groups of Foreman, they had a Foreman Grade 1 and a Foreman Grade 2.

And, Mel had always received the Grade 2 Foreman, the second level of Foremanship. And in the NAIU the contract recognizes only Foreman and General Foreman and Mel was raised, say, after a couple of days or a week, whatever it was that we discovered the error, to that second level of Foremanship – titled, if you will, under the NAIU as General Foreman, but still the second level of Foreman.

Q And, that would be somewhat comparable to what he would be making under the IBEW contract?

A The dollars and cents were still less. In terms of status and ranking of position they were the same.

Q How long was he out at the United Grocers job?

A A very short time, really. I don't remember the total off-hand. But, the Mervyn's job had essentially started. I indicated that someone else had been there ahead of him to can and put in the yufabrown(ph). We were fighting with rain.

But, the started the slab, and the slab in a Mervyn's [159] store is quite complicated. There is a high number of floor boxes that have to be placed with an extreme degree

of accuracy, a higher degree of accuracy than in most stores. And so there was immediate substantial work on the project.

Q Well, was he out at the United Grocers job for a month or two months?

A No.

Q How long.

A Our records indicate that he was there for one week, that first week, and that subsequent to that he spent the majority of this time on the Mervyn's project. He would bounce in for a day of rain or a couple of days of rain or if on normal job conditions he wasn't needed for a day or two.

But, after that first week he was primarily at the Mervyn's job.

Q Did Mr. Miller, to your knowledge, have an interaction with the NAIU?

A Not to my direct knowledge, no. I don't know if he did one way or the other.

Q Do you know of any grievances that were filed out there by the NAIU that he would have to handle?

A Yes.

The reference earlier to the gentleman who was fired from out there, I understand that—well, I know—Bruce [160] Norman visited the job site to speak with Mel and subsequently came in and talked with me also about it. And, basically I simply reiterated Mel's position, that I didn't see anything wrong with, that I support it, it's his decision.

Q And, that was the end of the greivance?

A Yes, it was.

JUDGE POLLACK: All right, just so the record indicates, Bruce Norman was the Business Representative of the NAIU?

THE WITNESS: That's correct.

BY MS. SURE:

Q Now, Mr. Choate, what level is Mr. Choate with respect to Mel?

A Ted would be superior to Mel. Ted is our Vice-President.

Q So, Mel would be reporting to Ted Choate as to the progress of the job?

A Our organization is structured that he could report either to Ted or to myself, that difference dependent upon who estimated the project. In the case of Mervyn's—and United Grocers for that matter—Ted estimated and ran both of those jobs from the office, so Mel reported there.

Subsequently Mel has done 1515 K Street, an apartment structure, and a couple of others that I happened to have been responsible for and so Mel has reported to me.

* * *

[161] **REDIRECT EXAMINATION**

BY MS. WATSON:

Q On jobs which you estimate how often would you say you visit the job site?

A Not nearly enough. It probably averages once a month, not that we're caught up.

Q Do you know if the same would hold true for jobs which Mr. Choate estimates?

A Ted tends to get to projects far less than I do.

Q Mr. Choate does no actual job site supervision, does he?

A No, he does not.

Q He works strictly in the office as an Estimator?

A That's right. He visits the job sites for the sole purpose of checking the general condition of the project.

Q And, you have no other job site Superintendents who would be between you and Ted and a Foreman like

Mel, the authority of, say, an overall job superintendent or something like that, do you?

A We had a General Field Superintendent at the time Mel was hired. His name was Everett Engel. Everett's primary responsibility became United Grocers and, in fact, we specifically [162] told Everett that he was not to intercede between Mel and the office, that Mel needed no additional supervision.

Q Is Mr. Engle still there?

A No. Mr. Engel has left our employ and we have not replaced that position.

(Pause.)

Q You have contracts with other IBEW Locals, do you not?

A Yes, we do.

* * *

REDIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q Has Local 340 picketed Nutter Electric since September 15, 1981?

A Yes.

Q Do you recall which job they picketed?

A They picketed the Mervyn's project that Mel was on.

[163] Q And, you stated that that did cause disruption to Nutter?

A Yes, it did.

Q And, would it also be disruptive to Nutter Electric if Mel Miller left your employment?

A Very, very much so.

* * *

[164] MELVIN K. MILLER

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Please give us you name and address for the record.

THE WITNESS: Melvin K. Miller, 6229 Gold Dust Drive, Sacramento.

DIRECT EXAMINATION

BY MS. WATSON:

Q You're employed by Harold E. Nutter, is that correct?

A Yes.

Q And, when were you first employed by Nutter?

A 1974.

Q You worked for Nutter until during the strike in 1981, is that correct?

A Yes.

Q And, before the strike what was your job position?

A I was supervising jobs.

Q Did you ever work for Nutter as a Journeyman?

A No.

Q After the strike in the summer of 1981 when did you come back to work for Nutter?

[165] A Oh, let's see. It was about two weeks after the strike. I came back from a job I was on in Redding.

Q After the strike was over when did you come back to work for Nutter?

A Oh, after the strike, excuse me. That was on January the 25th of 82.

Q Before the strike what was the last project that you were working on for Nutter?

A I was doing a job in Redding, a shopping center.

Q And, how many employees did you have on that job?

A I had as many as twenty.

Q Did you have any Foremen under you?

A Yes.

Q How many?

A Two.
Q Did they report to you or did they report to Norman or Ted?
A They reported to me.
Q On that job did you ever work with tools?
A No.
Q What was your authority on that job?
A Supervising the job?
Q Did you layout the work?
A Yes.
Q Did you work with the plans?
[166] A Yes.
Q Did you handle any kind of problems on the job with discipline or personality problems, things like that?
A No.
Q Did you have the authority at that time to handle problems if they came up?
A Yes.
Q When you came back to work for Nutter in January of 82 did you speak to Norm about what your job duties and authority would be?
A More or less it was going to be under the same—I was going to be in the same position I was before the strike.
Q The same position as what?
A I was before the strike, as a Supervisor running jobs.
Q Did Norm say that there would be any differences in your authority or your duties?
A No.
Q Did you discuss the new union, the NAIU?
A No, not really.
Q Did Norm discuss with you what job you would be working on, job or jobs?
A Yes.
Q And, what did he say?

A They had a Mervyn's job that was starting up and they wanted me to run that job for them.

[167] Q Did he describe to you specifically what you would be doing as far as running that job?

A Supervising the job.

Q He didn't go into any greater detail than that?

A No.

Q Did you ask him any other details?

A No.

Q Did he give you the plans at that time for the Mervyn's job?

A Yes, the plans were on the job.

Q When you first began work they were on the job already?

A Yes.

Q Did you discuss whether you would be working with the tools on that job?

A No.

Q Now, when you were on the job at Mervyn's how big a job was that?

A Oh, dollar-wise I don't know, but it took several men.

Q How big was the building that was involved?

A I don't know, just a normal size Mervyn's store.

Q A department store building?

A Yes.

Q Did it have several floors to it?

A Just one floor.

[168] Q That job was—that building did not have a roof on it at the time that you began, is that correct?

A Right.

Q It was being built from the ground up?

A Yes.

Q And, who bid that job?

A I think Ted Choate bid that job.

Q Did you have any kind of a pre-job conference or a job walk or anything on the Mervyn's?

A No.

Q Did Ted take you out to Mervyn's and say, "Here's what you should be doing"?

A No.

Q He just gave you the plans?

A Yes.

Q Were there already employees working on the job when you arrived?

A Yes, there was one man there.

Q One?

A One.

Q And, how many employees were there eventually on the job?

A There were several, seven.

Q When you started this Mervyn's job what was the first thing that you did?

[169] A Read the plans, look at the plans and order material, and check in with the General Superintendent on the job.

Q Was there a General Contractor on the job?

A Yes.

Q Besides an owner there was also a General Contractor?

A Right.

Q Did you confer with the General Contractor about what should be done and when?

A Yes.

Q When you ordered material how did you go about ordering material for that job?

A We have a shop man in there and I just call him and give him the order, then he delivers it to the job.

Q Now, by a shop man you mean—

A Material Handler.

Q When you wanted to order some material for the job did you have to ask Norm or Ted first as to what quantity you wanted to order or what type of material?

A No.

Q Did you ever order any equipment for that job?

A No, that was all ordered ahead, as far as switch gear, that type of thing, fixtures.

Q Would you have had the authority to—did you have the authority to order necessary equipment if you had needed it?

[170] A Yes

Q How would you have done that?

A Probably talked to Ted about it.

Q Did Ted or Norman ever question the amounts of materials that you ordered or the type of materials that you ordered?

A No.

Q Did you do any paperwork on that Mervyn's job?

A Sure.

Q What kind of paperwork?

A Oh, I had to keep the time up and changes, addendums, revisions came out.

Q What kind of changes would you be keeping track of?

A Well, for example, they would either add some outlets or fixtures or that type of thing.

Q And you would have to log these in a journal?

A Well, yes.

As a rule you kept track of the material and the labor on it.

Q Did you keep a daily job journal?

A No.

Q But, you did keep track of any changes that were made?

A Yes.

Q Did you ever make any changes on that Mervyn's job from the plans?

[171] A As a rule, if there were any changes made they would usually send an addendum through the shop and the shop would deliver it to me.

Q Who would send the addendum?

A Ted.

Q Would it be sent to him from the General Contractor?

A Yes.

Q Did you ever see any changes on this job that you thought should be made?

A There were a couple of times that I did make—just go ahead and do the changes.

Q What kind of changes were those?

A Added outlets.

Q Did you clear those with Ted or Norman before you made those changes?

A No.

Q Did you talk to the General Contractor before you made the changes?

A Yes.

Q How often in the course of that Mervyn's job did you confer with the General Contractor.

A As a rule, every day.

Q What about other sub-contractors, did you have any contact with them?

A Sure.

[172] Q Did you—who was responsible for coordinating your work with the work of the other sub-contractors on the job?

A The General Contractor.

Q Did you ever have to work—arrange your work around someone else's work, say, another sub-contractor?

A Sure.

Q How did you go about doing that?

A Well, as a rule, you get together with them and find out what elevations they're going to be running and whatever. So, you have to just work it out as you go along.

Q And, who made the decisions as to how to do that?

A After we conferred, why, I would make that decision on how it was done.

Q Did you clear that with Ted or Norm?

A No.

Q Did you have any safety problems on that Mervyn's job?

A No.

Q Did you ever send anyone home because of inclement weather?

A Yes.

Q Who decided when to send them home?

A I did.

Q Did you check that with anyone at the office?

A No, but as a rule I would call them and tell them what [173] I did so that they would know what was going on.

Q Would you call and see if there was anywhere else for these people to work?

A Yes.

Q Was this fairly common on the Mervyn's job?

A Yes.

Q Why was that?

A It was a wet winter.

Q Did you assign—was there any overtime on that Mervyn's job?

A No.

Q Do you have the authority to assign overtime?

A Yes.

Q Have you done it in the past?

A I haven't had to, no.

* * *

[174] Q How do you know that you have the authority to authorize overtime? Has anyone ever told you that?

A Well, when you're supervising a job you have to authorize some authority.

Q Now, on that Mervyn's job did you do layout?

[175] A Yes.

Q And, how much of your time would you say was spent with laying out the job?

A Oh, probably most of my time.

Q And, can you explain to us what you mean by laying out the job?

A Well, they have different elevations for outlets and they give specific measurements and that type of thing.

Q And, what would you—

A So, what I would do is just lay it out on the floor and then put the height down on the floor and then the fellows would come in and put the outlet in and pipe it in.

Q And, you would get those measurements from the plans and from the specifications?

A Right.

Q Then somebody else would actually do the installation?

A Right.

Q On that job who assigned the work as to which person would do what work?

A I did.

Q Who determined when a particular type of work was to be done?

A I did.

Q After the Mervyn's job got started and you saw that you needed more employees how were those extra employees [176] hired?

A Well, as a rule I would call Ted and ask him, or tell him that I needed more help. And something they would transfer somebody from another job to me or just hire somebody new.

Q Who determined the number of employees that were needed to do the work?

A I did.

Q Did Ted ever question your judgment on that?

A No.

Q Did you ever ask for anybody by name?

A No.

Q Did you ask for them by qualifications sometimes?

A Sometimes.

Q Was this ever questioned?

A No, not really.

Q If you had too many employees on the job and didn't have enough work for all of them what did you do?

A Usually notified Ted that I had to let somebody go and either transfer them to another location or just have to lay them off.

Q Did they ever question your judgment as to the number of employees that—

MS. SURE: Objection.

MS. WATSON: should have been laid off?

[177] MS. SURE: She's asked a speculative question and he hasn't said that it ever happened.

MS. WATSON: I don't believe it was couched in terms of speculation.

BY MS. WATSON:

Q Were employees laid off from that Mervyn's job because of lack of work?

A Yes.

Q And, was the procedure followed that you just described?

A Yes.

Q Did Ted or Norm ever question your judgment as to how many employees needed to be laid off?

A No.

(Pause.)

Q Did you ever have any problems on the job with employees being late?

A Yes.

Q And, what happened in the situation?

A Well, if they do it very often you just have to caution them about it.

Q Did this happen on the Mervyn's job?

A Yes.

Q And, what did you tell them?

A I told them to either get here on time or get replaced.

[178] Q What happened?

A They got there on time.

Q Did you check with Norm or with Ted before you warned them about their lateness?

A No.

Q Did you have any problems with any other—any other kind of disciplinary problems or personality problems with any of the employees on the Mervyn's jobs?

A I just had one, one young fellow.

Q And, what happened there?

A Well, he had quite a temper and whenever I tried to show him something, why, he would get a little irritated. He felt that the fellow that he was working with should have told him that instead of me. So, his temper flared up a little bit and he threw his hammer and all that type of thing.

So, I just told him to pack up his tools and get off the job.

Q And, did he?

A Yes.

Q Did you clear that with Norm or Ted before you sent him packing?

A No.

Q What happened after that?

A Oh, let's see. I think he called Norm and then went [179] in and talked to Norm. I hadn't talked to Norm at that point and then Norm called me.

Q This was after you had sent him from the job site?

A Yes.

Q Then what happened?

A Well, evidently Norm told him that when I run him off the job that was it.

Q Did you ever deal with anybody from the NAIU about this firing?

A Well, yes, he brought the NAIU representative out and he felt that he had a grievance there. But, there was nothing ever done about it.

Q Did you talk to the NAIU representative?

A Yes.

Q What did you tell him?

A Just his mannerisms, temper, that type of thing.

Q As far as you know was that employee ever rehired?

A Not with Nutter, no.

Q Have you ever granted any time-off to employees on that Mervyn's job for personal reasons, like a doctor's appointment?

A Sure.

Q How many times would you say you did that?

A Oh, at least maybe a dozen times.

Q Did you have to clear that with anyone?

[180] A No.

Q How did you work around that, if you granted somebody some time off and you needed another employee?

A Well, if he took an hour off or two hours off, why, that just went on his timecard, he just got paid for what he worked.

Q What if he took a day or two off?

A If he took a day or two off—it depended on the job, how fast it was moving, on whether I could spare him.

And, I usually worked it out to where they would take off when the right time came.

Q Who determined when the right time was for him to take off?

A I did.

Q Did you have to clear that with anybody at the office?

A No.

As a rule, I let them know, though.

Q When you were out at that Mervyn's job did you do any work with the tools?

A No.

Q Did you carry tools with you?

A Did you have a job shack or an office or anything at the site?

A Yes.

Q What kind of—

[181] A I had a trailer.

Q How much of your time would you say in the average week you spent actually in the trailer working with the plans?

A Well, I actually didn't spend too much time in the trailer. During the day probably an hour a day.

Q And, what did you spend the rest of the time doing?

A The rest of the time laying out jobs for the fellows, seeing that everything got put in right, and maybe somebody needed a piece of material and I happened to be going that way and I'd drop it off to them or something.

Q Did you do any electrical installation work at all on that job?

A No.

Q Have you ever recommended anyone for a raise or a promotion?

A Yes.

Q Who was that?

A His name was Larry Miller. He was an Apprentice.

Q What did you recommend him for?
A I just recommended him for a raise.
Q Who did you make the recommendation to?
A To Norm Nutter.
Q Do you know if that was followed?
A Yes. He got his raise.
Q Did you ever recommend anybody to be Foreman?
[182] A Sure.
Q Do you recall who that was?
A Francis Brenner.
Q Did you recommend him to be a Foreman, did you appoint him to be a Foreman, how did this work?
A I just appointed him to be a Foreman.
Q Did you clear that with Norm or with Ted?
A No.
Q Did you tell them afterwards?
A Yes.
Q How often did Ted visit the job site at Mervyn's?
A Oh, probably three or four times.
Q During the course of how many months?
A Four months, five months.
Q Would you ever switch any employees from one job or another in order to give them more experience on one type of task, or anything like that?
A No.
Q Did you have the authority to do that?
A Yes.
Q Did you have the authority to switch an employee around from one task to the other if he had asked you to?
A Sure.
Q Now, after Mervyn's job was over you were still working for Nutter—

[183] * * *

Q After you were on the Mervyn's job were you running other jobs for Nutter?
A Yes.

Q Did you run more than one job at once?

A Yes.

Q What were those jobs?

A We had three going: an office building at 1112 I [184] Street and an office building at 1515 K and an office building at 2nd and R.

Q Did you have any Foremen under you at any of those jobs?

A No.

Q What was the largest number of employees at any of those jobs?

A Fourteen.

Q Was your general authority while running those three jobs the same as your authority had been when you were at Mervyn's?

A Yes.

Q Did you ever switch anybody from one of those job sites to another?

A Yes.

Q Did you clear that with the office before you did it?

A No.

Q Whose decision was it to switch those people?

A It was mine.

Q Did you ever authorize any overtime, say, on Saturday on any of those jobs?

A No.

(Pause.)

Q Now, when you were on the United Grocers job when was that?

[185] A That was in March of 82.

Q Were you there the first week of your employment?

A Yes.

A Was that before your work at Mervyn's began?

A Yes.

Q Then after that did you spend most of your time at Mervyn's?

A Yes.

Q When you were out on the United Grocers job did anyone on that job ever come to you for advice or help with electrical problems?

A Occasionally.

Q Did the Foremen ever come to you for advice?

A Yes.

Q Did you ever correct any work on that job?

A Yes.

Q Did you ever show employees how it should be corrected?

A Yes.

(Pause.)

Q Who decided when there wasn't enough work for you at Mervyn's so that you should work somewhere else, like United Grocers?

A As a rule, Ted.

Q Did you tell him how much work was ongoing?

A No. I would usually call him and tell him that it was [186] raining and that it was a problem. And he'd just sent the people home. And as a rule they tried to keep me busy, so they sent me out to United Grocers.

Q And, United Grocers was, that building was already built, right?

A Yes.

Q It was covered?

A Yes.

Q So, you could work inside?

A Yes.

Q And that was not true at that time at Mervyn's?

A Right.

(Pause.)

Q When you were cited for working at United Grocers do you remember seeing someone on the job site who talked to you about being cited by the Union?

A Yes.

Q Who was that?
A Jay Cox, I think it was. Cox.
Q And who is Mr. Cox?
A He was one of the Journeyman Electricians on the job.
Q Working for some other contractor?
A Yes.
Q You knew Me. Cox, right?
A Yes.
[187] Q Had you worked together before?
A Yes.
Q And, had he worked for you an an employee?
A Yes.
Q Were you the Foreman when he was working for Nutter?
A Yes.
Q Did he ever work for you when youwere anything other than a Foreman?
A No.
Q Did Mr. Cox ask you when he talked to you on that day what you were doing on the United Grocers job?
A No, he knew. He knew what it was all about.
Q Did he ask you if you were a Foreman?
A No.
Q Did he say anything to you about why he was citing you?
A No.
Q When you were out at various times on that United Grocers job did Ted or Norm ever ask your opinion as to the quality of any of the Foremen out there or the employees?
A Yes.
Q And, how many times did they ask you about that?
A Oh, not too often.
Q Did you give them your opinion?
A Yes.

[188] Q Did they ever ask you about the potential of any employees out there to be Foremen?

A I don't remember.

Q Other than after the United Grocers job have you done any work with the tools for Nutter since you came back in January of 82?

A No.

(Pause.)

MS. WATSON: Nothing further.

DIRECT EXAMINATION (cont.)

BY MR. NOVOTNY:

Q What's the longest job you were on since you returned to Nutter after the strike?

A I guesss it was 1515 K.

Q How long did that job last?

A Six months.

Q What was your largest crew on that job?

A I had twelve.

Q Was that the job you had a Foreman on?

A Yes.

Q You say you worked on a Redding job for the company prior to the strike?

A Yes.

Q Did you have any authority over the company's finances on that job?

[189] A I carried a checkbook, yes.

Q Did you write checks on Nutter's behalf on that project?

A Yes.

Q And, were your job duties basically the same on the Mervyn's job as they were on the Redding job?

A Yes.

Q The Mervyn's job started sometime in February of 82?

A Yes, around the first or second of February, something in there.

Q How long did that job last?

A Until June or July, about the middle of July.

(Pause.)

Q And, what was your largest crew on the Mervyn's job?

A I think about seven.

Q And, you did have the authority to hire on that job?

* * *

[190] Q You did have the authority to hire on the Mervyn's job?

A Yes.

Q And, what would you do to hire?

A Call Ted Choate.

Q And he would send men?

A Yes.

Q And, you actually did lay off men at that job?

A Yes.

Q How many did you lay off?

A I think about four.

Q Do you have the authority to resolve any personality conflicts on the job?

A Sure.

Q Did you do that at Mervyn's?

A I didn't have to.

Q Have you done that on any other jobs you've worked at for Nutters since you returned after the strike?

A No.

Q Do you have the authority to resolve disputes over working conditions on the job?

A Yes.

Q And, have you had to do that since you returned after [191] the strike?

A No.

Q Was the Mervyn's job picketed by IBEW Local 340 at any time you were out there?

A Yes.

Q Did you personally observe the picketing?

A Yes.

Q Has anybody from Local 340, any officer or representative, to your knowledge asked you about your job position at Nutter?

A No.

Q Since you came back to work for Nutter?

A No.

* * *

CROSS EXAMINATION

BY MS. SURE:

Q Mr. Miller, how long were you an IBEW member?

A Thirty-two years.

[192] Q And, do you recall that at the time you began your membership with the IBEW that you entered into a contract with them and you took an oath?

A Yes.

Q And, you understood that there was a Constitution and Bylaws which govern a member and his union?

A Yes.

Q When you went back to work for Nutter you were still, to your knowledge, an IBEW member, you were not?

A Yes.

Q You're aware that the IBEW disclaimed interest in representing the employees of Nutter in September of 1981?

A Sure.

Q And, you're aware that the IBEW did not have a contract with Nutter in May of 1982?

A Yes.

Q And, anytime subsequent from September of 81 they did not have a contract?

A Sure.

Q But, you retained your membership in the IBEW and continued to work at Nutter Electric?

A Yes.

Q It's a fact, is it not, that you were never put in the position of performing any kind of collective bargaining for Nutter with any union, were you? Were you authorized to [193] do collective bargaining with the union for Nutter Electric?

A No.

Q And, you are not authorized, were you, to actually adjust a grievance with the Union, were you, for Nutter?

A Can you explian that a little bit more?

A Well, were you authorized to adjust—if a grievance were filed by the union, by any union, with Nutter were you authorized to resolve that grievance?

A Not with the union, no.

Q You did not appear to testify or rebut any of the charges, did you?

A No.

Q And, I'm referring to the Union fines against you.

A The assessment, yes.

Q And, you read that charge as it was sent to you, did you not?

A And, the charge said that you were pulling wire and doing work out at the United Grocers job?

A Yes.

Q And, you didn't go and rebut that to the Union Trial Board, did you?

A No. It wouldn't have done any good.

Q Well, it was true, wasn't it?

A It wouldn't have done any good.

Q It was true, wasn't it?

[194] A Well, it's true, yes.

Q In fact, out at the United Grocers job you were filling in, in a sense, because they wanted to keep you busy because of the rain, right?

A Yes.

Q So, at that time you were working with the tools out United Grocers?

A Yes.

Q Full time with the tools?

A Yes.

Q You carried your tools and you were doing all the Journeyman work like everyone else was?

A Yes.

It was just a day or two here and there and that's about what it amounted to.

Q And, that's when the Union individuals from the other signatory contractors saw you working?

A Yes.

(Pause.)

Q What was the name of your Foreman out at the United Grocers job?

A Everett Engel.

Q Was he the fellow from Oregon, or where was he from?

A No.

Q Not Everett Engel?

[195] Was this Engel fellow the only Foreman out there for all of you people at the United Grocers—

A No, actually Evertt Engel was the Superintendent on that particular job. And I think he had maybe four or five Foreman.

Q It was Everett Engel and then five Foremen. Then how many people like you were working out there?

A I don't know exactly off-hand how many were there.

Q Twenty?

A Not that many. Maybe fifteen.

Q Fifteen of you guys were working out there?

A About that.

Q Were the Foremen working also or were they not working?

A Some were, some weren't.

Q But, you guys were all working?

A Yes.

Q So, you were doing the work—and correct me if these aren't the right verbs for electrical work—but you were installing conduit?

A No, I was not installing conduit.

Q Pulling wire?

A Pulling wire.

Q Hanging fixtures?

A No.

[196] Q Installing plugs or switches?

A No.

Q Setting motor controls?

A No.

Q Mostly just pulling wire on this job?

A Mostly just pulling wire.

Q What other kind of stuff?

A I wasn't there that long. It was just like I was there a day or maybe two days and then it quit raining and I could go back on the Mervyn's job and then maybe spend the rest of the week there. Then if it rained over the weekend or whatever, why, then I'd have to come back to the United Grocers job for a day or two or whatever.

Q So, on those days you were just pulling wire?

A Yes.

Q And, you would not be directing the other employees as to what they were supposed to do, were you?

A Usually there was two or three of us pulling the wire and I was pretty much in charge of that.

But, that was just because everyone was pulling wire? They had their own Foreman, didn't they?

A Yes.
Q Are you familiar with any NAIU contract?
A Some.
Q Have you ever seen it?
[197] A I don't remember whether I have or not.
Q You don't recall seeing it?
A No, I don't recall seeing it.
Q Do you have any idea if they have any kind of a hiring hall or any system like that?
A Oh, sure they have a hiring hall.
Q Have you ever called there?
A No.
Q Do you know where it is?
A No.
Q Well, do you know how the men are hired by Nutter? Are they hired through the hiring hall or are they hired any other way?
A Most of them are hired through the hiring hall.
Q Who calls them, Norm or—
A Norm or Ted call them.
Q So, out at the United Grocers job you didn't lay off any men, did you?
A No.
Q You didn't hire any men?
A No.
Q You didn't fire any men?
A No.
Q You didn't transfer any men?
A No.
[198] Q You didn't authorize any overtime?
A No.
Q You didn't adjust any grievance?
A No.
(Pause.)
MS. SURE: No further questions.

* * *

[204] MS. SURE: We call Robert Ennis.
Whereupon,

ROBERT ENNIS

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Would you please give us your name and address for the record?

THE WITNESS: Robert H. Ennis, 2216 Arles Way, Sacramento, California.

JUDGE POLLACK: Can you spell your last name, please?

THE WITNESS: E-N-N-I-S.

DIRECT EXAMINATION

BY MS. SURE:

Q Mr. Ennis, are you an IBEW Local 340 member?

A Yes, I am.

Q How long have you been a member?

A Twenty-eight years.

Q Now, approximately March of 1982 where were you working?

A United Grocers warehouse on West Sacramento.

[205] Q Who were you working for?

A MHE Contractors.

Q That was electrical work?

A That was an electrical contractor, yes.

Q How long had you been out there?

A (Pause.)

About two months, a month and a half.

Q So, since January—

Q As soon as the project started for the conveyors I was the fifth Electrician for MHE on the job.

Q Were there any other electrical contractors doing work out there aside from MHE?

A Nutter Electric.

Q And, was the work being done by Nutter Electric in the same proximity or the same area as the work being done by MHE?

A Yes, all over the building.

Q How close was the work being done?

A Side by side.

Q Do you know who a Melvin Miller is?

A Oh, yes.

Q Did you ever have occasion to see him doing work out at United Grocers?

A Absolutely.

Q Can you tell us under what occasions that you may have [206] seen him work out there, whether it was—you know, what period of time?

A Oh, I think he showed up in March and he worked there for at least a month. You know, he worked just like we were working, he pulled wire and he just did general electrical work.

Q So, the times that you saw Melvin Miller out at the United Grocers job he was pulling wire and just doing electrical work?

A Just working like we were working, with the tools.

Q Did you at any time ever see him direct work for other Electricians to do?

A Absolutely not.

Q How can you say that?

A Well, most of the work that we were doing went on in the freezer area and the loading area in front of the freezers and the period of time that he was there they were pulling wire in the freezer. And when they weren't pulling wire he was with a crew of guys. And if he wasn't doing anything he'd just be standing around, like an Electrician waiting to be given an order to do something.

Q And, in fact, did you ever see someone come and give him an order?

A Absolutely.

Q Was this person giving orders to other people out there?

[207] A Yes.

Q Do you happen to know his name?

A There were two of them. One was named Don—I can't think of his last name. He was also cited, he was an ex-IBEW. And, the other guy was Lonnie something-or-other, and I can't remember his last name either. But, he ran the job, Lonnie was out there the longest of anybody that I know of from Nutter, he was there a long time.

Q And, these two individuals were directing all of the other employees out there?

A Yes.

Q Including Melvin Miller?

A Yes.

Q Was Miller wearing tools?

A All the time.

Q Were you a witness with respect to the charge that was preferred against Melvin Miller?

A I was.

Q And, at the Trial Board did you relay that you had seen Mr. Miller working with the tools?

A Absolutely.

Q Did you relay that at all the times you saw him working in fact he was working with the tools?

A Yes. I mean, he never did supervise. All the time he was doing electrical work.

[208] Q Now, if Mr. Miller had been working out at some other site, like Mervyn's would you have any knowledge as to what he did out there?

A No.

Q So, your only knowledge and the only knowledge you gave the Trial Board was what you saw at United Grocers?

A Right. What he was cited for was working with the tools at United Grocers. The only time I've seen him other

than today was there, in my whole life. I don't even remember ever seeing him at a Union meeting.

MS. SURE: No further questions.

JUDGE POLLACK: Ms. Watson?

CROSS EXAMINATION

BY MS. WATSON:

Q Mr. Ennis, you didn't see him every day in March, did you?

A There were very few days that we worked that I didn't see him, that he was there. Because we worked in the same area.

Q But, you didn't see him every day?

A Yes, I would say I saw him every day

Q You're sure you saw him on that job every day?

A Every day that he was there that he worked.

Q Well, you don't know whether he worked there every day in March?

[209] A Oh, no, I don't know that. I couldn't possibly know that.

Q And, you really don't know how many days in March he worked, do you?

A Oh, not how many days. But, I say I know for a fact that he worked for two weeks because we worked side by side for at least two weeks. That's the first two weeks he came there and then they moved farther back into the freezer and after that I didn't see him ever single—

Q You really have no idea, other than those two weeks—

A That's what he got cited for.

Q —how he worked at United Grocers—

A Right.

Q —or how long?

A I mean, you see him coming into the building. I didn't see him working, but you'd see him coming in and sometimes leaving.

Q So, you really only saw him off and on for two weeks?

A Oh, no. Off and on for a month and a half.

Q But, in the same area you were working?

A In the same area I was working in?

Q Yes.

A No, a month and a half.

(Pause.)

MS. WATSON: I don't have any more questions.

[210] MS. SURE: Carl Monroy.

* * *

[211]Whereupon,

CARL MONROY

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Would you please give us your name and address for the record?

THE WITNESS: Carl Monroy, 5204 Lakecrest Avenue, Carmichael.

DIRECT EXAMINATION

BY MS. SURE:

Q Carl, you're an IBEW Local 340 member, are you not?

A Yes, I am.

Q How long have you been a member of the IBEW?

A About thirty-seven years.

Q Have you ever had occasion to work out at the United Grocers job?

A Yes, I have.

Q What kind of work were you doing out at the United Grocers job?

A We were doing a conveyor system out there for MHE Contractors.

Q How long were you out there approximately, do you recall?

A From February 8 until August the 19th.

Q Was MHE an IBEW 340 contractor?

[212] A No, they worked from, I think, Grand Rapids, Michigan. They do all of this work for United Grocers.

Q But, they were—you were working there through the IBEW 340?

A Yes, I was working out of 340.

Q Was there any other electrical contractor out there doing work?

A Nutter.

Q Were they working near you?

A Oh, yes, They were working right along—well, not right alongside of us, but right in the same area.

Q And, had you ever occasion to see an individual named Melvin Miller working out at the United Grocers job?

A Oh, yes, I saw him there for quite a while.

Q What was he doing when you saw him there?

A He was pulling wire. The first time I seen him they had wire to pull. I didn't even know the man until they told us who he was. Then, when I first seen him, he was pulling wire. But, he done other work, I mean, they were doing other work, they didn't just pull wire all the time.

Q Was he wearing his tools?

A Yes.

Q Was he working with tools?

A Yes.

Q Did you at any time see him directing other employees [213] as to what to do?

A No, there were directing him what to do.

Q Who is "they", do you know who was directing?

A Well, they had a Foreman there from Oregon that was also cited, and he was the fellow that told them what to do. And they had a guy over there that looked like sort of a guy that was doing most of their telling, and he wasn't supervision either, he was just working there and he was doing most of the telling.

Q Most of the what, now?

A Most of the telling of what to do there.

Q Oh, I see.

A Outside of his Foreman being there I don't know any other supervision that was there.

Q But, there was some Foreman that was directing everyone as to what to do so?

A Yes.

Q Now, the days that you saw Mr. Miller out there was there any time that you recall that he was not doing general Journeyman work?

A He was always doing Journeyman work. I mean, the same as we did, just working with the tools.

Q Were you one of the witnesses at the Trial Board?

A At our Local, do you mean, when – yes, I was called in there when he was being cited. It's been so long now [214] that I don't remember what it was all about.

Q Did you relay that you had seen him working with his tools?

A Oh, yes.

Q And, would you have any knowledge as to what he did if he worked at some other job, like Mervyn's?

A I wouldn't know that.

Q So, the only thing that was discussed at the Trial Board was what you saw him do at United Grocers?

A Yes.

They said they wanted to know who he was and, I think – all I was on that was just a witness because I wasn't the one who cited him on that.

Q You just testified what you saw?

A Right.

(Pause.)

MS. SURE: No further questions.

* * *

[216] MS. SURE: Charlie Lux.

Whereupon,

CHARLIE LUX

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE POLLACK: Please give us your name and address for the record.

[217] THE WITNESS: Charlie Lux, 6140 West Second Street, Rio Linda.

JUDGE POLLACK: Is that L-U-X?

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MS. SURE:

Q Mr. Lux, you're an IBEW 340 member, aren't you?

A Right.

Q How long have you been a member?

A About eleven years.

Q Have you every had occasion to see a Mr. Albert Schoux working?

A Yes, I have.

Q On what occasion was that?

A I was out at Aerojet.

Q What were you doing out at Aerojet?

A I was sent out there with Morris Electric to set some electrical switch gear and that's when I ran into him.

Q And, what was he doing when you ran into him out there?

A He was mounting a disc connect on a concrete pillar and working in the vicinity. I was out there for two days.

Q And, how long did you see him out there?

A Those two days.

Q And, on those two days was he at that same place?

[218] A In that vicinity, yes. I did distinctly see him on that one day mounting a disc connect and doing electrical working in the area.

Q And, was that work that is typically done by a Journeyman Electrician?

A I would say so, yes.
Q Did he have tools on him?
A Yes.
Q Do you recall what he had?
A Just a standard tool pouch and then he had a rotor hammer and the disc connect and what it takes to mount it on concrete.
Q How close were you to him these days that you were working out there?
A Oh, fifty or sixty feet.
Q And, at the time that you saw him out there did he have any people working for him?
A I don't know that for sure.
Q Okay.
And, did you cite Mr. Schoux?
A Yes.
Q Did you cite him for this work that you saw him doing out there?
A Right.
Q And, did you relay that to the Trial Board?
[219] A As to how—
Q As to what you saw him doing out there?
A Mounting the disc connect on the—yes, that's what he was doing.
Q Okay.
(Pause.)
MS. SURE: No further questions.

* * *

[222] LEROY FRITH

having been first duly sworn, was called as a witness herein as was examined and testified as follows:

JUDGE POLLACK: Mr. Frith, can you give us your name and address, please?

THE WITNESS: Leroy Frith, 6502 Engel Road, Carmichael.

DIRECT EXAMINATION

BY MR. NOVOTNY:

Q Mr. Frith, you were the Business Manager of IBEW Local 340 until June of this year?

A July of this year.

Q And, you occupied that position in 1981, did you not?

A Yes.

Q And, you negotiated with the Sacramento Valley Chapter [223] of NECA for a new agreement in 1981?

A Yes.

Q And, the negotiations reached a stalemate in September or August of 81?

A June 11th.

Q June 11th of 81, okay.

And, the Union disclaimed interest in representing the employees of employers in the NECA multi-employer unit on September 15, 1981?

A Yes.

Q Now, by issuing that disclaimer the Union disclaimed interest in representing all employees of all employers who NECA represented, correct?

A I think that's what the disclaimer said.

Q Sometime after the disclaimer you had a conversation with an attorney who purported to represent some of Nutter's employees, correct?

A (Pause.)

Yes.

Q Do you remember if you had a conversation with Mr. Robert Horn?

A I believe that's who it was.

Q Okay.

And, you discussed the possibility with Mr. Horn of filing a Representation Petition covering Nutter's employees [224] with the NLRB, did you not?

A I don't recall that.

Q You don't recall that.

Do you recall discussing filing an RC Petition on Nutter's employees with Walter Hurst?

A No, I don't recall that either.

Q What did you discuss with Horn?

A We had our attorney there and I don't know that this is not priveleged information.

Q Well, I don't want anything that you have said between you and your attorney.

A Well, my attorney was there representing me and the other attorney was representing his people. But, it wasn't with regards to negotiations, I can tell you that.

Q Okay.

The Local Union was interested at that time in representing Nutter's employees, was it not?

A At that particular time?

Q Yes.

A I don't think so.

Q What time was this, first of all?

A I'm not sure of the dates.

Q Was it October of 81, or possibly a month after the disclaimer?

A I think it was—I'm really not sure of the date.

[225] Q Okay.

How many meetings did you have with Mr. Horn?

A As I recall, one.

Q And, what did you discuss regarding Local 340's representation of Nutter's employees?

MS. SURE: I'll object at this point. If, in fact, our attorney was present there may be confidential attorney-client—

JUDGE POLLACK: Well, why would it be priveleged just because an attorney is there? The attorney-client privelge deals with communications between a client and the attorney and the attorney and the client and it usually doesn't apply when a third party is present.

MS. SURE: I just want to make sure the question is directed to only those discussions which were when the third party was present.

JUDGE POLLACK: Okay, fine. That makes sense, sure.

BY MR. NOVOTNY:

Q Do you recall what discussions actually took place at that meeting?

A I think the meeting was called to see if we would pay the bill for the people working for Harold Nutter because they had an unfair labor charge that they could file against Nutter. As I recall that's what the meeting was about.

Q You could pay a bill?

[226] A Yes, if I would pick up the tab for it. And, I told them, no, I wasn't interested. If they had a charge they could take it to the Board and it wouldn't cost them anything. If they wanted to hire an attorney they'd have to pay for it themselves.

As I recall it that was the gist of the conversation.

Q And, your testimony is that you did not agree, with Horn or with anyone else, to file a Representation Petition with the Board covering Nutter's employees?

A I do not recall that being any part of the discussion. The information I just gave is what I recall that the meeting was about.

Q Okay.

Do you remember who Walter Hurst was?

A Oh, not really. I think he was an assistant to Horn or something. The only contact I've had with him is that he was called in to testify when we were downstairs, I think.

JUDGE POLLACK: In the Grason trial?

THE WITNESS: Yes, I believe so.

BY MR. NOVOTNY:

Q And, you had no conversations with him regarding a Representation Petition for Nutter?

A Not to my recollection, no.

Q All right.

[227] Sometime after the disclaimer you met with Ted Mosely, the International office representative, to discuss the labor dispute involving Local 340, is that correct?

A I think he was a member of a task committee that was sent out here from Washington, D.C. which was made up of the NECA and the IBEW.

A He was here on a factfinding mission?

A Yes.

Q And, that mission occured sometime in November of 81?

A I don't recall the date.

Q Okay, was it within a month or two after the disclaimer?

A I think it was, but I don't recall the date.

Q All right.

And you, in fact, told Moseley that you had agreed to file a petition on behalf of Nutter's employees, did you not?

A Not that I recall.

Q You never made any statements to Moseley?

A I don't recall.

JUDGE POLLACK: Mr. Moseley is with the International?

BY MR. NOVOTNY:

Q Is Mr. Moseley with the International office of the IBEW?

A Yes. At least he was at that time.

[228] JUDGE POLLACK: Do you know what his position was, his title?

THE WITNESS: No, I think he was an Assistant to the President or something like that.

JUDGE POLLACK: Okay.

MR. NOVOTNY: I want to distribute a document dated November 9, 1981 called "Memorandum Re: Sacramento Assignment" from Ted Mosely to Charles H. Pillard. This will be Charging Party's 6.

(The document referred to was marked for identification as Charging Party's Exhibit No.6)

Mr. Frith, please turn to page seven of the document and read the last paragraph to yourself.

(Pause.)

THE WITNESS: I don't recall—I've read it but I don't recall this being the text of it.

JUDGE POLLACK: Okay, Mr. Frith, wait for the question.

BY MR. NOVOTNY:

Q Does this document refresh your recollection that you actually told Ted Mosely of a plan by Local 340 to file a petition on Nutter?

A No.

Q It does not?

[229] A No.

Q And, you still don't recall telling Moseley that?

A If he'd a been part of it he would have been one of the seventeen.

Q Do you recall telling Moseley that, if properly handled, the petition could have a domino effect on other NAIU employees formerly working for non-union contractors?

A I think those are his words, not mine.

Q Those are his words.

(Pause.)

Do you know whether IBEW Local 340 has kept a copy of this document in its normal course of business?

A This document here?

Q Yes.

A I doubt if we even have it.

Q Were you sent a copy of it after Moseley made his report?

A No.

Q What's the first time that you saw the document?

A I don't think I've ever seen it in its entirety, but I think I glanced at it, probably, at one of the hearings that we were in.

Q You did talk to Mr. Moseley about Nutter, did you not?

A It could be that all of the contractors were mentioned [230] but I don't recall specifically talking to him about Nutter.

Q Well, do you have any reason for believing that the statements contained in this memorandum are not true?

A No, I don't.

But, again, these are his words, not mine. Maybe I discussed with him about talking to Horn, but the statement that I just gave regarding the charges that they wanted to process and us pick up the tab was the basis of the whole thing. And, I told him to forget it. They can attach whatever significance they want to it.

Again, I don't recall these specific words.

Q Now, after the disclaimer—September 14, 1981—Local 340, in fact, had an intent to organize every electrical contractor in the Sacramento area that would be willing to sign an agreement with Local 340, is that correct?

A I don't know that that's absolutely correct. I think that the object of a Local Union is to organize, but I think that our first concern was to organize the seventeen and get an agreement and an association established before we made any kind of plans on anything else.

Q Did you ever make a statement at any hearing or did you ever testify before anywhere else that it was the intent of the Local Union to organize every electrical contractor in the Sacramento who would be willing to sign an agreement with 340?

[231] A I think I just now inferred the same thing.

Q But, did you ever testify that—

JUDGE POLLACK: Did you say those words, that's what he wants to know.

BY MR. NOVOTNY:

Q Did you say those words in prior testimony?

A I don't recall whether I did or not.

Q Okay.

Did you give testimony in the matter of Arden Electric?

A I think I covered the whole field.

Q And, do you recall answering a question by your attorney, Robert Jessinger, of whether it was your intention after the disclaimer to sign contracts with each individual member of the Sacramento Valley Chapter NECA bargaining group? Do you recall giving testimony to that?

A No, I don't.

MR. NOVOTNY: Your Honor, may I show him his prior statement?

JUDGE POLLACK: Sure.

Just so the record is clear, when you referred to Arden and I referred to Grason we're talking about the same case. We know that but somebody reviewing the record might not.

BY MR. NOVOTNY:

Q Would you read into the record what your testimony to [232] that question I just posed?

A You want me to read 17(A)?

Q Yes.

A "My intention was—

MS. SURE: No, not out loud, to yourself I believe he wanted it.

THE WITNESS: I can't read it into the record to myself.

MS. SURE: Did you ask him to read in into the record?

MR. NOVOTNY: I did.

JUDGE POLLACK: Go ahead.

MS. SURE: Well, now the only purpose it would be to read it into the record is if it were an inconsistent statement, and at this point it's not been shown to be inconsistent at all.

MR. NOVOTNY: Mr. Fritch did not recall it.

MS. SURE: But, it's still not—even as you have represented it it's not inconsistent.

JUDGE POLLACK: All right. I'll overrule the objection. Go ahead.

THE WITNESS: "My intention was to organize every electrical contractor in the jurisdiction of (blank) that was willing to sign an agreement with Local 340, IBEW."

No, that's no different than my position has been all the way along, and I just made a statement—

[233] MR. NOVOTNY: Well, I appreciate that—

THE WITNESS: —that eventually down the road we had plans that we would get an agreement and get the thing moving and anyone that was willing to become a part of the new organization, they were welcome.

BY MR. NOVOTNY:

Q Okay, so you were contemplating—the Local Union was contemplating forming a new association?

A The Union was not contemplating forming anything.

Q I'm sorry.

The Local Union was contemplating bargaining with a new association in Sacramento?

A After it was formed, absolutely.

Q Okay.

And, according to the Local Union any former NECA contractor who wished to become a member of this new association was free to do so?

A As far as we were concerned.

Q And, Local 340 would welcome that action, would it not?

A If a person wanted to become organized how could we turn it down?

Q That's fine.

Now, approximately ten days after the Local Union served the disclaimer on NECA the Union filed seventeen

[234] Representation Petitions against former NECA members, or members of the NECA bargaining unit, is that correct?

A I don't recall whether all of them were or not. I think they were, though. In fact, I couldn't even tell you who they are right now.

Q All right.

Seventeen employers, though?

A Yes.

Q And, the purpose of filing that petition was to get all IBEW contractors possible back to an agreement, is that true?

A I would say that, basically if you're saying that we're trying to get our employers that had our people working back under an agreement, that's exactly what we were trying to do.

Q All right.

And, by your contractors you meant former NECA contractors who had been represented by the association in negotiations?

A Any contractor.

Q Any contractor. Any contractor of NECA?

A If these seventeen contractors were a part of the NECA then that's a true statement.

Q Would that include also other contractors represented by NECA?

[235] A (Pause.)

Q Were you also interested in filing those petitions in encouraging other contractors in NECA to come back to the IBEW fold?

A Ultimately down the road it was our hope that everybody would be back under an agreement. The seventeen, we filed on those because we figured that those seventeen people were good, solid IBEW employers. It was a judgment call and those seventeen were selected. It wasn't a hundred percent correct but it was partially correct.

Q Basically as I understand it, then, the Local's intent of issuing the disclaimer was to oust NECA as the bargaining representative and negotiate as many individual contracts as possible with former members of the bargaining unit?

A That isn't true when you use the term "oust NECA".

Q You didn't want—

A The answer to that is no.

Q Okay, you didn't—

JUDGE POLLACK: Mr. Novotny, wait until he finishes his answer.

MR. NOVOTNY: All right.

BY MR. NOVOTNY:

Q You didn't want to bargain with NECA any further?

A We couldn't bargain with NECA any further at the time. [236] Mark Thierman. And, I don't know if he was involved or not. But, that was—we were completely bound at the time.

Q I'm asking you again whether it was the Local's intent of, if not ousting, at least eliminating or not bargaining with NECA anymore so that you could get as many individual IBEW agreements with NECA contractors as possible without NECA in the picture?

A It was our intent to get as many employers signed up as we could.

Q All right.

Now, can the witness be shown General Counsel's Exhibits 3, 5 and 7.

(Reporter hands to the witness.)

And, can the witness also be shown a copy of the IBEW Constitution, GC 9?

(Hands to witness.)

Mr. Frith, reviewing the fines against Ted Choate and Mel Miller and Al Schoux, all of these individuals were fined under Article XXVII, Section 1, Subsection 6 of the

IBEW Constitution, were they not? And, take your time to verify that.

(Pause.)

A Okay.

Q All three were fined under that provision?

A That's what it says.

[237] Q Okay.

And, reading along in the IBEW Constitution, that provision applies for—that it is a penalty to "work for, or on behalf of, any employer, employer-supported organization or other union, or representatives of any of the forgoing whose position is adverse or detrimental to the IBEW", is that correct?

A That's what it says.

Q Now, Nutter Electric and Royal Electric were formerly signatory to agreements with Local 340, is that correct?

A Yes.

Q And they are right now non-signatory?

A Not signatory.

Q And, the reason they are non-signatory is because the Local Union disclaimed interest in representing their employees, is that correct?

A That's partially correct and partially not correct.

Q Why is it not correct?

A Because the International's position is that the disclaimer is invalid.

Q All right.

It is Local 340's position, is it not, that the disclaimer was valid and that these employers are not signatory at this moment?

A 340's position is that if the International—if any [238] of these employers told the International they wanted to sign an agreement, they would have an agreement.

Q The Local told the International that?

A No.

If any employer involved in this today called the International and wanted an agreement they would have an agreement.

Q Is the Local Union interested in obtaining new agreements with Nutter and Royal at this time?

A I can't speak for the Local any longer.

Q Okay.

As of June of 83, last month, was it the Local's interest in recognizing these employers with a new agreement?

A Had Nutter or Royal Electric walked into the office and said, "I want to sign an agreement", I don't think I could have turned it down.

Q Now, the reason these employers are non-signatory at this momement, though, is because the Local Union disclaimed interest in representing their employees?

A I'm not going to quarrel that with you and I can't give you an answer without quarreling.

JUDGE POLLACK: All right.

I mean, there was no objection, but I think the point being made by the witness is right and I think you're beginning to argue with him. He's answered the question [239] before. You might not like the answer, but I think he's answered it.

MR. NOVOTNY: All right.

BY MR. NOVOTNY:

Q Now, these individuals were also fined under Article XXVII, Section 1, Subsection 7 of the IBEW Constitution, is that correct? You can verify—

A Yes, I did.

Q Okay.

And, this provision provides that it is contrary to the Constitution to "wrong a member of the IBEW by an act, or acts, causing him physical or economic harm". Now, how were these individuals causing Local 340 economic harm?

A How? By stealing their jobs, ratting on them.
Q They're stealing their jobs?
A Sure.
Q Okay.
A That's how they got them in the first place.
Q And, is the reason they're stealing these jobs is because they're non-signatory employers? They're working for non-signatory employers?
A Certainly.
(Pause.)
Q It is fair to say, then, that the fines were at least partly aimed at encouraging these individuals to go back to [240] work for IBEW employers?
A I can't hear you.
Q Is it fair to say that at least one object of these fines was to encourage these individuals to go back to work for IBEW employers so that they would not cause the Local economic harm?
A I don't know the intent of the Trial Board.
Q Well, in what other way could they cease causing the Local economic harm than by going back to work for signatory contractors?
A You're asking me for an opinion now?
Q I am.
A My opinion would be that the more qualified you are the more help you're giving them, and the more help you're giving them the more damage you're creating to the other people that don't get involved in something like that.
Q In fact, there is really no other way these individuals could cease causing the Local economic harm than by going to work for IBEW signatory contractors, correct?
A I didn't understand the question.
Q All right.
There is no other way they could not cause the Local economic harm than by going back to work for signatory contractors? That's the way they could not cause the Local economic harm, is that correct?

[241] A If they didn't work for them they wouldn't be creating any harm to any of their brothers, that's true.

Q So, they could avoid the economic harm to the Union if they either stopped working for the employer or worked for an IBEW signatory contractor, right? One of those two?

A I would think that would be reasonably—a reasonable assumption on your part, yes.

MR. NOVOTNY: I have no further questions.

JUDGE POLLACK: Ms. Sure?

CROSS EXAMINATION

BY MS. SURE:

Q Mr. Frith, subsequent to September of 1981 the IBEW 340 had no contract with Nutter Electric, is that correct?

A That's correct.

Q And, the IBEW 340 had no collective bargaining relationship with Nutter Electric?

A That's correct.

Q And, the IBEW 340 had no contract with Royal Electric at that time either?

A That's correct.

Q Now, is it not accurate to say, then, that with respect to the general premise of the Union that at any time an employer wants to have a contract with the Union an employer can come in and seek a contract with the Union, that's the general premise of the Union?

[242] A That's correct.

Q Is that the position that you would put Nutter and Royal in if they were to seek a contract with the Union under the general premise that any employer can comein and have a contract?

A When I was in offfice I couldn't have looked at it any other way.

Q So, when you respond that the Union would have a contract with them it's because the Union at all times would have a contract with any employer who sought a contract with the Union?

A That's correct.

Q But, in fact the employers that the Union wanted to continue doing business with were the employers who desired to continue doing business with the Union, the Union filed Representation Petitions on them, did they not?

A That's correct.

Q And, these were the employers who the Union did desire to continue doing business with?

A That's correct.

Q And, at that time the Union did not indicate any desire to continue doing business with Nutter or Royal, did they?

A No.

Q And, since then has the Union—during the time that [243] you were Business Manager did the Union indicate any desire to continue to have a contract with Nutter or Royal, aside from the general premise that the Union would have a contract with any employer who desired a contract?

A No contact was made through the Local Union, if that's what you're asking.

Q And, you authorized on contact, did you, by a Union official to anyone from Nutter or Royal to seek out a contract with them?

A No.

Q Did you ever at any point authorize any Union official to go seek out authorization cards from Nutter employees?

A No.

Q Did you at any time yourself go out and seek out the representation of Nutter or Royal employees?

A No.

Q To your knowledge did anyone from Local 340 in writing send out any contracts to Nutter or to Royal showing the contracts that the IBEW had outstanding?

A No.

Q Now, you heard testimony with respect to picketing of Nutter. To your knowledge, after September of 1981 what form of picketing was done with respect to Nutter?

A Informational with regards to wages and working conditions.

[244] Q Is this what is termed "area standards picketing"?

A Yes.

Q Was there at any time any recognitional picketing or picketing which would seek out a contract with Nutter?

A No.

Q So, was the purpose of your picketing, then, to maintain the area standards?

A That's correct.

(Pause.)

Q Now, when you say the purpose of fining individuals under the pretext that they are causing economic harm is that not the section that you use for any fine with respect to any individual who is working for a non-union employer?

A I would think so.

You have to remember that I never sat on the Trial Board as Business Manager, so I don't have the clear thinking of the Board.

Q You can't speak to the insight as to those who instituted the fine, but your insight with respect to citing on that section would be that that would be one of the sections used whenever any Union member would be working for a non-union contractor?

A That's correct.

Q And, with respect to the section cited for the breach of the contract and the oath, are those also typically used [245] for individuals working for non-union employers?

A Yes, but not totally. For most violations those are used.

Q Now, to your knowledge the most recent Assent for Royal Electric was—was it an Assent A or an Assent B?

A B.

Q Now, if a contractor had an Assent A with the Union and then at a later point came in and sought out an Assent B what would the Union do?

A I've had it happen and I just—if the contract is in effect at this time I just tell them, "Give your notice to the association and when the negotiations are concluded we'll sign a B."

Q And, you would have no way of knowing whether or not the association got that notice? That was up to the employer?

A No, not unless they sent me a copy of it.

Q In fact, the International approved the Letter of Assent B on Royal, did they not?

A Yes.

* * *

[246] BY MS. SURE:

Q In fact, did Royal Electric at any point sign an interim agreement as an Assent B with the Union?

A In 1976.

Q And, were these interim agreements under the auspices of NECA or were they, again, independent interim agreements signed by Assent B's?

A Independent interim agreements. They were signed by A's also.

Q Did NECA enter into an interim on behalf of employers at that time?

A No. In fact, they took some of their A signers to court.

Q The ones who did enter into the—

A Except for one that we're talking about now.

Q Royal?

A If he had an A they didn't take him.

Q So, in 1976 when NECA took the employers who signed interim agreements into court they did not take Royal into court?

[247] A That's correct. And he was signed on a B.

(Pause.)

Q So, with respect to the Nutter employees, you at no time indicated to either—the Nutter employees subsequent to September of 1981—did you at any time indicate to any Nutter employee or to any individual who held himself out to be the lawyer for the Nutter employees that you would take on any responsibility with respect to representing those employees?

A No.

Q In fact, did you affirmatively say you would not take on that responsibility?

A The question wasn't with regards to organizing. The question was withregards to the funding required for the attorney to process unfair labor charges.

A And you said no?

A I said absolutely not. They had other directions they could go.

Q And, you at no time sent out any Business Agent to a Nutter or Royal job site to sign-up employees, did you?

A No.

Q Did you ever go out yourself to try and sign-up employees?

A No.

Q This is post-September of 81?

[248] A The answer is no. For Nutter and Royal.

* * *

REDIRECT EXAMINATION

BY MR. NOVOTNY:

Q Now, you say that the picketing against Nutter after the disclaimer was normal area standards picketing?

A Yes.

Q Do you recall what the wording on a typical picket sign would be?

A (Pause.)

There was a place for the name and it said, in this case here, "Nutter Electric does not pay the prevailing wages and fringes as established by Local Union 340, AFL-CIO". And, that's close, I don't know if that's exact or not, but it's close.

Q So, the prevailing wages you were picketing for were [249] those outlined in the then present IBEW Local 340 agreement?

A Yes.

Q And, to your knowledge, at that time Nutter was not paying wages and benefits commensurately with the IBEW 340 agreement?

A Yes.

* * *

General Counsel's EXHIBIT 2

LOCAL UNION 340
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

CERTIFIED

November 2, 1982

James Choate
7516 Hickory Avenue
Orangevale, CA 95662

Dear Sir and Brother;

You are hereby notified to appear before the Trial Board of Local Union 340, IBEW, meeting at 535 Fulton Ave., Sacramento, on Monday, November 15, 1982, at 7:30 p.m., to answer charges filed against you by Brother Lee Frith, Card No. D11624, for alleged violation of:

IBEW Constitution, Art. XXII, Sections 3 and 4

IBEW Constitution, Art. XXVII, Section 1, subsections 1, 6 and 7

Enclosed is a copy of the original charge filed against you. You may bring witnesses to give evidence in your behalf. You will be afforded an opportunity at the hearing to present any relevant evidence and to cross-examine any witnesses you may desire. You may, if you desire, have an *IBEW member* act as you counsel.

Fraternally,
ELECTRICAL WORKERS UNION
Local No. 340

/s/MICHAEL W. DYBA

Michael W. Dyba
Recording Secretary

EXHIBIT 2

11/1/82

Recording Secretary
IBEW – Local Union 340
5841 Newman Court
Sacramento, CA 95819

Dear Sir and Brother;

I, Lee Frith, Card No. D11624, a member of Local Union 340, IBEW, hereby prefer charges against Brother James R. Choate, Card No. D107429 a member of Local Union 340, IBEW, whose last known mailing address is 7516 Hickory Ave., Orangevale, CA 95662, for alleged violation of the following:

BY-LAWS – Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __

CONSTITUTION – Article XXII, Section 3 & 4, Subsection _____
Article XXVII, Section 1, Subsection 1
Article XXVII, Section 1, Subsection 6
Article XXVII, Section 1, Subsection 7
Article __, Section __, Subsection __
Article __, Section __, Subsection __

The alleged violation occurred on 10/26/82 at approximately 11:30 (a.m.) at 535 Fulton Avenue, Sacramento.

The alleged violation occurred as follows; Jim Choate has been a member of the IBEW for 26 years and has not terminated his contract with the IBEW. He has not fur-

thered the purposes of the IBEW and has sacrificed it's interest in the following manner; working for an employer who is no longer signatory to an IBEW agreement with Local Union 340. Jim Choate has wronged other members of the IBEW by causing economic harm.

WITNESSES:

Fraternally,

[sig illegible]

General Counsel's EXHIBIT 3

LOCAL UNION 340
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

CERTIFIED

November 16, 1982

James Choate (D107429) L.U. 340
7516 Hickory Avenue
Orangevale, CA 95662

Dear Sir and Brother;

The Executive Board, sitting as a Trial Board of Local Union 340, IBEW, on Monday, November 15, 1982, after due consideration of the evidence produced, has acted upon the charges filed against you by Brother Lee Frith.

The charges alleged you violated:

IBEW Constitution, Art. XXII, Sections 3 and 4

IBEW Constitution, Art. XXVII, Section 1, subsections 1, 6 and 7

The decision of the Trial Board is as follows:

It is the decision of the Trial Board that James Choate, Card #D107429, is employed by Nutter Electric, who is no longer signatory to an I.B.E.W. Agreement with L.U. #340. This conduct violates the following.

Guilty of violating I.B.E.W. Const. Art. XXII, Sec. 3—assessed $4,000.00.

Guilty of violating I.B.E.W. Const. Art. XXII, Sec. 4 and Art. XXVII, Sec. 1, subs. 1—no assessment.

Guilty of violating I.B.E.W. Const. Art. XXVII, Sec. 1, subs. 6—assessed $1000.

Guilty of violating I.B.E.W. Const. Art. XXVII, Sec. 1, subs. 7—assessed $1000.

Total assessment due—$6,000.00

EXHIBIT 3

Any member who claims an injustice has been done him by the Trial Board may appeal. (See Article XXVII of the IBEW Constitution.) Appeals from the decision of the Trial Board must be directed to International Vice President, S.R. McCann, IBEW, Ninth District, 150 No. Wiget Lane, Suite 100, Walnut Creek, CA 94598.

Appeals to the Vice President MUST state in writing:

1. Your reasons for claiming an injustice has been done you by the Trial Board.

   NOTE: Where an assessment has been levied, include Items 2 and 3; otherwise, eliminate.

2. When assessment exceeds twenty-five dollars ($25), twenty dollars ($20) must be paid directly to the Local Union or mailed with a postmark date not later than fifteen (15) days after the decision was rendered, which was on the 17th day of November.
3. In order to keep an appeal active, additional payments to the Local Union of not less than twenty dollars ($20) must be paid within each succeeding thirty (30) day period from date of first payment until the decision is rendered by the Vice President.
4. Appeals to the International Vice President must be postmarked within forty-five (45) days from the next Local Union Meeting which will be on the 13th day of December 1982.
5. A copy of the appeal sent the Vice President shall be furnished to the Local Union Business Office.
6. If the above Constitutional provisions are not met, your appeal will not be considered timely or in order.

7. For further details, see appropriate enclosed sections of the IBEW Constitution.

Fraternally,

/s/MICHAEL W. DYBA

Michael W. Dyba
Recording Secretary

General Council's EXHIBIT 4

LOCAL UNION 340
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

CERTIFIED

SECOND NOTICE

January 19, 1983

Albert L. Schoux (D173986)
16247 Jericho Rd.
Grass Valley, CA 95945

Dear Sir and Brother;

You are hereby notified to appear before the Trial Board of Local Union 340, IBEW, meeting at 535 Fulton Ave, Sacramento, on Monday, February 7, 1983, at 8:00 p.m., to answer charges filed against you by Brother C. Lux, Card No. D245161, for alleged violation of:

IBEW Constitution, Art. XXII, Sections 3 and 4

IBEW Constitution, Art. XXVII, Sec. 1, subsections 1, 6 and 7

Enclosed is a copy of the original charge filed against you. You may bring witnesses to give evidence in your behalf. You will be afforded an opportunity at the hearing

to present any relevant evidence and to cross-examine any witnesses you may desire. You may, if you desire, have an *IBEW member* act as your counsel.

Fraternally,
ELECTRIC WORKERS UNION
Local No. 340

/s/MICHAEL W. DYBA
Michael W. Dyba
Recording Secretary

Exhibit 4

December 20, 1982

Recording Secretary
IBEW – Local Union 340
5841 Newman Court
Sacramento, CA 95819

Dear Sir and Brother;

I, Charles C. Lux, Card No. D245161, a member of Local Union 340, IBEW, hereby prefer charges against Brother Albert Schoux, Card No. D173986 a member of Local Union 595, IBEW, whose last known mailing address is 16247 Jericho Rd., Grass Valley, CA 95945, for alleged violation of the following:

BY-LAWS – Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __
Article __, Section __, Subsection __

CONSTITUTION – Article XXII, Section 3 & 4, Subsection _____
Article XXVII, Section 1, Subsection 1
Article XXVII, Section 1, Subsection 6
Article XXVII, Section 1, Subsection 7
Article __, Section __, Subsection __
Article __, Section __, Subsection __

The alleged violation occurred on 12/14/82 at approximately _____ (a.m./p.m.), at Aerojet, Bldg. #2009.

The alleged violation occurred as follows; Brother Schoux has been a member of the IBEW for 24 years and has not terminated his contract with the IBEW. He has not furthered the purposes of the IBEW and has sacrificed it's interest in the following manner; working for an employer who is no longer signatory to an IBEW agreement with Local Union 340. Brother Schoux has wronged other members of the IBEW by causing economic harm.

WITNESSED

FRATERNALLY.

/s/ CHARLES LUX

Charles Lux

General Counsel's EXHIBIT 5

IBEW
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS
1125-Fifteenth St. N.W.
Washington, D.C. 20005

Charles H. Pillard	Ralph A. Leigon
International	International
President	Secretary

February 22, 1983

Mr. Michael Dyba, Rec. Sec.
Local Union No. 340, IBEW
535 Fulton Avenue
Sacramento, CA 95825

RE: Albert Schoux
Card No. D173986

Dear Sir and Brother:

Notice of the action taken by your Local Union against this member has been received here. This action has been filed for future reference. If the member clears his record with your Local Union, please notify us at once to clear our records.

Best Wishes.

Fraternally,

/s/ RALPH A. LEIGON
Ralph A. Leigon
International Secretary

LOCAL UNION 340
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

CERTIFIED

February 11, 1983

Albert Schoux
16247 Jericho Rd.
Grass Valley, CA 95945

Local Union #595
Card #D173986

Dear Sir and Brother;

The Executive Board, sitting as a Trial Board of Local Union 340, IBEW, on Monday, February 7, 1983, after due consideration of the evidence produced, has acted upon the charges filed against you by Brother C. Lux.

The charges alleged you violated:

IBEW Constitution, Art. XXII, Sections 3 and 4

IBEW Constitution, Art. XXVII, Section 1, subsections 1, 6 and 7

The decision of the Trial Board is as follows:

Brother Schoux, Card #D173986 was performing bargaining unit work while employed by Royal Electric. This conduct violates the following:

Guilty of violating I.B.E.W. Constitution Art. XXII, Sec. 3—assessed $2,500.

Guilty of violating I.B.E.W. Constitution Art. XXII, Sec. 4 and Article XXVII, Sec. 1. subs. 1—no assessment.

Guilty of violating I.B.E.W. Constitution Art. XXVII, Sec. 1, subsection 6—assessed $2,500.

Guilty of violating I.B.E.W. Constitution Art. XXVII, Sec. 1, subsection 7—assessed $3,200.

Total assessment due—$8,200.00

Any member who claims an injustice has been done him by the Trial Board may appeal. (See Article XXVII of the IBEW Constitution.) Appeals from the decision of the Trial Board must be directed to International Vice President, S.R. McCann, IBEW, Ninth District, 150 No. Wiget Lane, Suite 100, Walnut Creek, CA 94598.

Appeals to the Vice President MUST state in writing:

1. Your reasons for claiming an injustice has been done you by the Trial Board.

   NOTE: Where an assessment has been levied, include Items 2 and 3; otherwise, eliminate.

2. When assessment exceeds twenty-five dollars ($25), twenty dollars ($20) must be paid directly to the Local Union or mailed with a postmark date not later than fifteen (15) days after the decision was rendered, which was on the 11th day of February 1983.
3. In order to keep an appeal active, additional payments to the Local Union of not less than twenty dollars ($20) must be paid within each succeeding thirty (30) day period from date of first payment until the decision is rendered by the Vice President.
4. Appeals to the International Vice President must be postmarked within forty-five (45) days from the next Local Union Meeting which will be on the 14th day of February 1983.
5. A copy of the appeal sent the Vice President shall be furnished to the Local Union Business Office.
6. If the above Constitutional provisions are not met, your appeal will not be considered timely or in order.

7. For further details, see appropriate enclosed sections of the IBEW Constitution.

Fraternally,

/s/MICHAEL W. DYBA

Michael W. Dyba
Recording Secretary

General Counsel's EXHIBIT 9

IBEW Constitution

And Rules for Local Unions and Councils under its jurisdiction

As amended at the 31st Convention,
Atlantic City, New Jersey,
October, 1978

. . .expelled by, or indebted to any L.U., without consent of the I.S. and without first consulting the last L.U. of which the applicant was a member in regard to his character and record. The I.P. shall decide any case in dispute.

Sec. 2. Each applicant for membership shall fill out an application blank furnished or approved by the I.S., and answer all questions. The original application or a copy must be sent to the I.S.

Sec. 3. The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W.

Sec. 4. Each applicant admitted, shall, in the presence of members of the I.B.E.W., repeat and sign the following obligation:

"I ....., in the
(Give name)

presence of members of the International Brotherhood of Electrical Workers, promise and agree to conform to and abide by the Constitution and laws of the I.B.E.W. and its local unions. I will further the purposes for which the I.B.E.W. is instituted. I will bear true allegiance to it and will not sacrifice its interest in any manner."

Sec. 5. The obligation card signed by the applicant shall be sent to the I.S.

The L.U. shall have each applicant, except as provided in Section 10 of this article, take the obligation before a regular meeting, or if it so decides, this may be done outside the regular meeting, or if it so decides, this may be done outside the regular meeting in the presence of the president or the vice president or the recording secretary.

Sec. 1. Any member may be penalized for committing any one or more of the following offenses:

(1) Violation of any provision of this Constitition and the rules herein, or the bylaws, working agreements, or rules of a L.U.

(2) Having knowledge of the violation of any provision of this Constitution, or the bylaws or rules of a L.U., yet failing to file charges against the offender or to notify the proper officers of the L.U.

(3) Obtaining membership through fraudulent means or by misrepresentation, either on the part of the member himself or others interested.

(4) Engaging in activities designed to bring about a withdrawal or secession from the I.B.E.W. of any L.U. or of any member or group of members, or to cause dual unionism or schism within the I.B.E.W.

(5) Engaging in any act or acts which are contrary to the member's responsibility toward the I.B.E.W., or any of its L.U.'s, as an institution, or which interfere with the performance by the I.B.E.W. or a L.U. with its legal or contractual obligations.

(6) Working for, or on behalf of, any employer, employer-supported organization, or other union, or the representatives of any of the foregoing, whose position is adverse or detrimental to the I.B.E.W.

(7) Wronging a member of the I.B.E.W. by any act or acts (other than the expression of views or opinions) causing him physical or economic harm.

(8) Entering or being present at any meeting of a L.U., or its Executive Board, or any committee meeting while intoxicated, or drinking intoxicants in or near any such meeting, or carrying intoxicants into such meeting.

(9) Disturbing the peace or harmony of any L.U. meeting or meeting of its Executive Board, using abusive language, creating or participating in any disturbance, drinking intoxicants, or being intoxicated, in or around the office or headquarters of a L.U.

(10) Making known the business of a L.U., directly or indirectly, to any employer, employer-supported organization, or other union, or to the representatives of any of the foregoing.

(11) Fraudulently receiving or misappropriating any moneys of a L.U., or the I.B.E.W.

(12) Causing or engaging in unauthorized work stoppages or strikes or other violation of the laws and rules of the I.B.E.W. or its L.U.'s.

(13) Wilfully committing fraud in connection with voting for candidates for L.U. office, or for delegates to conventions.

Supreme Court of the United States

No. 85-1924

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 340

ORDER ALLOWING CERTIORARI. Filed October 6, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

Justice Scalia took no part in the consideration or decision of this petition.

A true copy of
JOSEPH F. SPANIOL, JR.
Test:
Clerk of the Supreme Court
of the United States

By [sig illegible]
Deputy

U.S. GOVERNMENT PRINTING OFFICE: 1986—181-483:40501